

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

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4 In Re:) Case No. 2:21-bk-18205-DS
5 CRESTLLOYD, LLC,) Chapter 11
6) Los Angeles, California
7 Debtor,) Monday, 11:30 A.M.
8 -----X) March 21, 2022

9 CONTINUED HEARING RE:
10 [142] DEBTOR'S MOTION FOR
11 AN ORDER:
12 (1) APPROVING THE SALE OF
13 THE DEBTOR'S REAL PROPERTY
14 FREE AND CLEAR OF ALL
15 LIENS, CLAIM, ENCUMBRANCES
16 AND INTERESTS WITH THE
17 EXCEPTION OF ENUMERATED
18 EXCLUSIONS;
19 (2) FINDING THAT THE BUYER
20 IS A GOOD FAITH PURCHASER;
21 (3) AUTHORIZING AND
22 APPROVING THE PAYMENT OF
23 CERTAIN CLAIMS FROM SALE
24 PROCEEDS;
25 (4) WAIVING THE 14-DAY
STAY PERIOD SET FORTH IN
BANKRUPTCY RULE 6004(h);
AND
(5) PROVIDING RELATED
RELIEF

20 TRANSCRIPT OF ZOOM PROCEEDINGS
21 BEFORE THE HONORABLE DEBORAH SALTZMAN
22 UNITED STATES BANKRUPTCY JUDGE

24 Proceedings produced by electronic sound recording;
25 transcript produced by transcription service.

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1 LOS ANGELES, CALIFORNIA, MONDAY, MARCH 21, 2022

2 11:47 A.M.

3 --oOo--

4 THE CLERK: Please come to order. This court is
5 now in session, the Honorable Deborah J. Saltzman
6 presiding.

7 THE COURT: Thank you.

8 Good morning. It is March 11, 2022. This is the
9 Bankruptcy Court for the Central District of California,
10 Los Angeles Division. This is our continued hearing in the
11 Crestlloyd matter on the real property sale motion. We're
12 all appearing by Zoom again. For finding today's new Zoom
13 link and for following the instructions on the Court's
14 website, with your assistance my law clerks have collected
15 a list of appearances, so I'm going to run through those
16 first.

17 I'm going to call roll from the list of those of
18 you who have said that you plan to speak at today's
19 hearing. If I get to the end of that list and you don't
20 hear your name but you do plan on addressing the Court,
21 please let me know your full name and who you represent.
22 And as I call roll, please tell me your name and who you
23 represent. To mute and unmute you hover over the button on
24 your screen if you're on the video and if you're on the
25 phone you press *6.

Page

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1 Mr. Golubchik and Mr. Arnold, good morning.

2 MR. GOLUBCHIK: Good morning, Your Honor. David
3 Golubchik, Todd Arnold of Levene Neale Bender Yoo &
4 Golubchik for the debtor.

5 THE COURT: Mr. Shinderman and Mr. Schumacher,
6 good morning.

7 MR. SHINDERMAN: Good morning, Your Honor. Mark
8 Shinderman and Will Schumacher of Millbank on behalf of
9 Yogi Securities. I believe we are joined by Mr. Englanoff,
10 the principal of Yogi Securities.

11 THE COURT: Okay. Good morning, all.

12 Ms. Andrassy, good morning.

13 MS. ANDRASSY: Good morning, Your Honor. Kyra
14 Andrassy of Smiley Wang-Ekvall, counsel for Inferno
15 Investment.

16 THE COURT: Mr. Rafatjoo, good morning.

17 MR. RAFATJOO: Good morning, Your Honor. Hamid
18 Rafatjoo of Raines Feldman, LLP for Nile Miami.

19 THE COURT: Mr. O'Dea, good morning.

20 MR. O'DEA: Good morning, Your Honor. Ryan O'Dea
21 of Shulman Bastian Friedman & Bui on behalf of secured
22 creditor American Truck & Tool Rentals. I'm having some
23 difficulty with my camera. I'll see if I can fix that this
24 morning. I don't know that I have anything to address with
25 the Court, though.

Page

6

1 THE COURT: Okay. I may have a question for you,
2 as well as counsel for other objecting mechanics
3 lienholders, but I'm not sure how that will go, but we can
4 hear you just fine, in any event.

5 Ms. Lee DeVoll, good morning.

6 MS. LEE DEVOLL: Good morning, Your Honor.

7 Marguerite Lee DeVoll on behalf of secured creditor J&E
8 Texture.

9 THE COURT: Counsel, your audio was breaking up a
10 little bit. Could you just try again? I just want to make
11 sure we hear you okay.

12 MS. LEE DEVOLL: Sure. It may just be that I'm
13 not talking loud enough also. Good morning, Your Honor.
14 Marguerite Lee DeVoll on behalf of secured creditor, J&E
15 Texture.

16 THE COURT: Thank you. Good morning.

17 Mr. Newman, good morning.

18 MR. NEWMAN: Good morning, Your Honor. Sam
19 Newman, Sidley Austin, on behalf of prospective purchaser
20 Richard Saghian.

21 THE COURT: Mr. Geher, good morning.

22 MR. GEHER: Excuse me. Good morning, Your Honor.
23 Thomas M. Geher, Jeffer Mangels Butler & Mitchell,
24 appearing for secured creditor Hankey Capital, LLC.

25 THE COURT: Mr. Horoupian, good morning.

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7

1 MR. HOROUPIAN: Good morning, Your Honor. Mark
2 Horoupian of SulmeyerKupetz on behalf of Yvonne Niami.

3 THE COURT: Mr. Smith, good morning.

4 MR. SMITH: Greetings to all. Special appearance
5 only Smith Andre Mario for special interested party and
6 winning overbidder Andre Mario Smith.

7 THE COURT: Ms. Madoyan, good morning.

8 MS. MADOYAN: Good morning, Your Honor. Noreen
9 Madoyan on behalf of the United States Trustee Peter C.
10 Anderson.

11 THE COURT: And Mr. Morrow, good morning.

12 MR. MORROW: Good morning, Your Honor. Gregory
13 Morrow on behalf of Italian Luxury Group and Italian Luxury
14 Design, LLC.

15 THE COURT: Okay. I believe that is my list.
16 Anyone else needing to address the Court this morning?

17 MR. BREGMAN: Yes, I would like to, Your Honor.

18 THE COURT: Oh, please, go ahead, counsel. Why
19 don't you make your appearance.

20 MR. BREGMAN: Thank you very much. Good morning,
21 Your Honor. Jerrold Bregman of BG Law, LLP on behalf of
22 Hilldun Corp., a secured creditor.

23 THE COURT: Thank you. Need one moment here.
24 I'm going to update my list.

25 (Pause)

Page

8

1 Okay. What I'd like to do is kind of treat this
2 as closing comments period. As far as I'm concerned, I
3 think that there's no more testimony that's necessary
4 today. What I'd like to do is give counsel to make any
5 closing thoughts in support of or in opposition to the
6 motion.

7 I would like to start with the movant and because
8 it is their motion and because we'll have a lot of
9 comments, after that we'll give the movant kind of a last
10 word at the end before I'm in a position to make a ruling.

11 So Mr. Golubchik, would you like to get us
12 started?

13 MR. GOLUBCHIK: Yes, Your Honor. Before I do, I
14 just wanted to inquire. We filed extensive evidentiary
15 objections to various declarations. Shall we deal with
16 them now or later?

17 THE COURT: Why don't we deal with them later?

18 MR. GOLUBCHIK: Okay.

19 THE COURT: I have a lot of thoughts on them.

20 MR. GOLUBCHIK: Got it. Okay. Well, Your Honor,
21 I guess my interpretation of the hearing on Friday and
22 continuance to today was I hoped by our encouragement that
23 the parties would be able to talk over the weekend and
24 maybe get somewhere to a better place. Unfortunately, that
25 did not happen, so I think everyone is taken to their

Page

9

1 positions and we're moving forward.

2 In light of the testimony we had, I would like to
3 summarize the testimony, address some of the comments Your
4 Honor had and go through the elements of the sale motion
5 that we need to do.

6 THE COURT: Okay.

7 MR. GOLUBCHIK: And although, if you recall, I
8 said my theme was, what's the alternative probably
9 inartfully said. I think at the end of the day that is an
10 issue because the argument of the other parties as I'll
11 discuss later give us a do-over and there should be another
12 auction based on the evidence provided. There is a
13 question, what's the alternative. So let me go through
14 this, Your Honor.

15 We have five elements again of 363(b) for a sale
16 motion. We have a sound business purpose, which we
17 discussed. I don't think there are any objections to that.
18 Fair and reasonable price. That's where we have the big
19 issue including the consideration whether the purchase
20 price is grossly inadequate. Adequate marketing. I think
21 the marketing here was beyond adequate. It was exceptional
22 and I don't think anyone has opposed that.

23 Good faith. While the members focus on lack of
24 good faith of the brokers and the seller, for this element
25 it's good faith of relationship with the buyer and the

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1 buyer's efforts in connection with the auction. You have a
2 declaration submitted by the seller. You have a
3 declaration submitted by the buyer as to the good faith
4 negotiations, public open auction, and I'm not aware of any
5 evidence to the contrary. In fact, I'm not aware of any
6 substantive evidence that addresses the other elements to
7 the contrary. And then we have the fifth one is accurate
8 and reasonable notice, which again no objection.

9 So really for 363(b), the main issue we focused
10 on and we discussed had to do with fair and reasonable
11 price and the gross inadequacy based on the appraisal from
12 19 and the parties' thoughts in connection even with the
13 bid procedures hearing and what we achieved.

14 You'll have testimony from Rayni Williams, one of
15 the brokers, that discussed the mark -- the extensive
16 marketing of the property that discussed her belief as to
17 the valuations, even on cross-examinations from
18 Mr. Shinderman that had to do with price per square foot
19 and lack of applicability of that to especially the larger,
20 more unique properties such as this.

21 She testified that she believed that in light of
22 the efforts in today's market this was the highest and best
23 price and I believe he used the term "optimum price"
24 because that was the question. Either myself or Mr. Newman
25 asked that question. I asked her if she thought maybe

Page

11

1 something more could be achieved if there's a do-over or if
2 there's some more time and her response was no.

3 We also had Mr. Chad Roffers of Concierge discuss
4 the process and he focused on two things, the auction
5 itself as well as the reserve because a lot of parties have
6 been objecting to the fact that there was no reserve.

7 I'd like to reiterate that the issue reserve was
8 addressed as part of the bid procedures motion. The
9 objections here appear to be for -- request for
10 reconsideration because we had testimony at the prior
11 hearing and there was a determination that it be acceptable
12 not to proceed with the reserve. In addition to that,
13 Mr. Roffers discussed why on a property such as this he
14 believed a reserve was not necessary. And then to the
15 extent throughout that whole discussion, if you do have a
16 reserve how do you set the reserve? The reserve cannot be
17 tied to the liens or the obligations on the properties that
18 people wanted, so he supported what was prior -- previously
19 testified to without the reserve.

20 I think Ms. Williams also testified at first she
21 thought there should be a reserve and we went to the break.
22 And then when she heard Mr. Roffers discuss the reasoning
23 for having no reserve and since she did not have the online
24 auction experience she agreed and she changed her mind that
25 a reserve is not necessary. So we had the two brokers

Page

12

1 discuss that issue. And at the end of the day after a full
2 opportunity to market an auction we received this high bid
3 from the current buyer.

4 We already discussed that there was no funny
5 business in connection with the end of the auction. It was
6 merely a time zone issue. Under the procedure if there is
7 a last bid within three minutes it's extended, so we
8 discussed that and no funny business.

9 The other thing I did over the weekend, I looked
10 at the other cases out there that had to do with gross
11 inadequacy of the purchase price and the cases that I
12 looked at it seems in every case there was something going
13 on that was not above board, up and up.

14 There's a case called *Country Matter of Canton*,
15 172 B.R. 217 from Northern District of Ohio in '94. In
16 that case the court denied a sale as grossly inadequate
17 based on the valuation. It had to do with nursing homes
18 where the court found that the property wasn't advertised.
19 It wasn't even listed. There was no public sale. It was
20 private sales. Something didn't smell right and at the end
21 of the day the price that was sought was substantially
22 lower than the value.

23 Looked at another case called *Alisa Partnership*
24 from Delaware, 15 B.R. 802, Bankruptcy Court District of
25 Delaware from 1981. We had -- there was an auction.

Page

13

1 Actually, it's kind of similar. At the end of the auction
2 the high price was 410. When they came to the sale
3 hearing, there was an outside offer of \$475,000. And while
4 the offer was not supported at the time with proof of funds
5 or deposit, the court stated, since I have to look out for
6 the best interests of the estate, this offer is \$65,000
7 more and it should be considered. We're not going to
8 approve the other offer.

9 Similar to our situation. The numbers are very
10 different. The only difference here is while we were still
11 willing to accept offers we did not receive any offers. In
12 fact, in driving this morning to court I received a call I
13 think I received maybe eight or ten times from a person
14 every few days says, I'm submitting, I'm submitting.
15 Nothing happened. So in that case there was another offer.

16 Another case I looked at was in the matter of
17 *Cossett*, 51 B.R. 166, Bankruptcy Court, Southern District
18 of Ohio from 1985. In that case we had -- there was a
19 valuation for 85,000 and a sale for 40,000. I smile a
20 little because I think a lot of our laws have to do --
21 although our numbers are very different kind of look at the
22 tail end of the truck case with interest rates but it's
23 still applicable. The court found that a sale of 48,000
24 versus valuation of 85,000 shocks the conscience where
25 there was only one bidder who happened to be the sole

Page

14

1 secured creditor and they'd have all the information. No
2 one else. Here we have full-blown auction after extensive
3 marketing.

4 Then we have one more case called *In Re: Oneida*
5 *Lake Development*, 114 B.R. 352, B.R. Northern District of
6 New York in 1990, where there was an appraisal of property
7 from 1987 for a million and a quarter. Two years later
8 there was a sale. There were three bidders. The highest
9 price was 776, which was withdrawn, and eventually the
10 higher price was \$750,000, 500,000 less than the offer.

11 The court made a finding that the requirements
12 for a sale because there was a public auction, although
13 substantially less, because it was properly marketed it was
14 available to the public, the court found that in such case
15 the requirement of fair and reasonable price was met.

16 So in every case that I looked at -- and there
17 aren't too many cases on this issue of gross inadequacy,
18 there is some problem here. In our case there was no
19 problem. We had a bid procedures order. A bid procedures
20 order was followed to a T. Everything happened. We needed
21 to extend the time of the auction. We submitted a motion
22 to modify. I don't know if it was a motion or a
23 stipulation, but we had a proceeding and the Court ordered
24 the extension. We had the auction as ordered by the Court
25 and the high bid resulted from that.

1 Between March 8th when we filed the motion to
2 today, two weeks approximately, right? Yes. We do not
3 have one additional offer whether high or lower. There's
4 just nothing else out there and the brokers as well as the
5 auctioneer testified that they believed that nothing would
6 change. In fact, it may be worse if there's a do-over if
7 this buyer walks because, remember, this buyer was the
8 highest bid by 16 million dollars because the other one
9 was -- no, I'm sorry, 26 million, but there was no 110; 100
10 was the next bid below this buyer, so that's a concern.

11 Again, if you look at the evidence, and that's
12 why we had evidentiary objections, while objecting parties
13 talk about the war in Ukraine and all these different
14 things, at the end of the day it is argument but not
15 evidence.

16 THE COURT: Well, Mr. Golubchik, I was going to
17 ask you that question. I mean, if you assume for the
18 purposes of your comments that I overrule all of your
19 evidentiary objections and we accept all of the evidence
20 given as true, does any of that evidence, you know, support
21 any conclusion other than that the sale should be approved?

22 MR. GOLUBCHIK: No, because again, you'll have
23 arguments. And even if it's evidence of the parties you do
24 not have evidence even proffered from any other real estate
25 broker, real estate professional, economist, someone that

Page

16

1 would say anything is different. If you look at both sides
2 of the evidence scale you have one -- you have principals
3 discussing that they are not happy with the situation, but
4 you have no credible evidence of anything that would be
5 different. That's my "what's the alternative" point.

6 On the other side you have the brokers and the
7 auctioneer from the seller's side that discuss that this --
8 there was exhaustive marketing, this is the highest price
9 and they believe things would not be any better and there's
10 a chance they may be worse if there's a do-over. And
11 that's setting aside the whole public policy, preserving
12 the integrity of judicial orders and auctions. Just purely
13 realistic market and the experts because the only experts
14 that have presented any evidence are the seller's experts.
15 So even if everything is a rule, even if all of their
16 declarations are admitted, it doesn't change anything, at
17 least from our point of view. Okay.

18 So then we go to 363(f), they're free and clear.
19 And again, I'd like to point out that this is in the
20 disjunctive, so we do not have to meet everything, only
21 one. Your Honor said you may have some questions for the
22 mechanics lien creditors. I was going to initially start
23 out with based on the stipulations we have their objections
24 are withdrawn.

25 THE COURT: Okay. But there are mechanics

Page

17

1 lienholders that have not consented to the sale, so up to
2 wouldn't apply there as it would to the two where there are
3 stipulations, so what sub-provision of 363(f) would apply
4 to those?

5 MR. GOLUBCHIK: So first, it is our view and our
6 belief that the -- and we stated in a reply the mechanics
7 lien creditors are entitled to priority. As far as I
8 understand, the only party that questions that is Inferno
9 and Inferno's position is they recorded their deed of trust
10 prior to mechanics lien creditors.

11 Hankey and Yogi, I do not believe, are disputing
12 that. As part of our motion we submitted that infamous
13 Exhibit 6 that was executed by Inferno, Crestlloyd pursuant
14 to which Inferno agreed that any payouts first go to pay
15 third-party loans and costs of construction. And after all
16 that is paid, there's an allocation of profit between
17 Inferno and Crestlloyd.

18 So the only objecting creditors actually signed
19 the subordination which may apply not only to secured, by
20 unsecured creditors as well. We don't need to deal with
21 that right now.

22 Now, separate and apart from that, we believe
23 that the other non-filing mechanics lien creditors fall
24 into consent, implied consent as we briefed in the reply.
25 The *ACCEL Concrete* case, Ninth Circuit BAP, 95, 178 B.R.

Page

18

1 198, where the BAP found that when -- it referred to
2 Citibank in that case, but it found you need either consent
3 or non-opposition. And I believe that our Local Rules
4 always provide that you're non-opposition may be viewed as
5 consent to the relief granted, the standard language. But
6 the *ACCEL Concrete* discusses that, as well as numerous
7 other cases we have in our reply.

8 Next -- so we have two objections, formal
9 objections to the sale. Those are the objections of Yogi
10 and Inferno. As part of our motion we argued that both
11 objections are subject to *bona fide* dispute. Neither
12 creditor contested that. I know we had discussions at the
13 last hearing, but as part of the briefing, neither one
14 contested it.

15 Then finally is (f)(5), whether the creditor
16 could be compelled to accept a money judgment in a
17 proceeding and it's not a proceeding that has to be
18 pending. It's one that could be brought. As always
19 happens with objecting creditors everyone argues *Clear*
20 *Channel*. *Clear Channel*, however, did not discuss the
21 foreclosure process, which is, I guess, the out that
22 debtors are moving -- or sellers always argue in connection
23 with this.

24 We have three possible proceedings. Some are
25 pending and some could be brought. One, as part of the

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19

1 reply we briefed the receivership proceeding and attach the
2 receivership orders which expressly states that the
3 property can be sold free and clear of liens, everything
4 attaches with the same validity extent and priority to be
5 addressed at a future time and that's exactly what we're
6 proposing.

7 The second we briefed under state law that could
8 be a foreclosure proceeding. So Hankey, as the creditor
9 that's senior to Yogi and Inferno, has the ability to have
10 a non-judicial foreclosure which was scheduled the day
11 before -- or the day after we filed bankruptcy and under
12 state law the junior creditors receive what they receive,
13 if anything.

14 And finally, we brief the possibility --

15 THE COURT: Oh, I'm sorry, Mr. Golubchik. So
16 you're talking about (indiscernible) related to the
17 prepetition loan?

18 MR. GOLUBCHIK: Yes. Well, right now we're
19 dealing -- based on our mind, we're dealing with two
20 objecting parties, Yogi and Inferno, both of whose liens
21 are junior to Hankey.

22 THE COURT: Okay.

23 MR. GOLUBCHIK: Prepetition Hankey was commencing
24 the foreclosure of its prepetition, not the DIP loan, and
25 under state law senior creditor has the foreclosure unless

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1 someone pays them off, wipes out the juniors.

2 And the final is the plan of reorganization.

3 THE COURT: Then if -- let's go back for a sec.

4 Then what about the mechanics lien?

5 MR. GOLUBCHIK: Oh, it doesn't wipe out the
6 mechanics lien because Hankey comes behind the mechanics
7 lien. I don't think there's an objection. Just like you
8 can have a second or a third have a foreclosure sale, you
9 wipe out everyone after you, but you take it subject to the
10 senior interest.

11 THE COURT: Okay. So your (f)(5) argument there
12 as to foreclosure would not apply as to any mechanics
13 lienholders, who've not consented?

14 MR. GOLUBCHIK: That is correct. I -- our
15 position is the mechanics lien creditors have consented
16 based on the implied consent of the *ACCEL Concrete*.

17 THE COURT: What if I disagree with that? What
18 if I think that implied consent actually doesn't work here?

19 MR. GOLUBCHIK: That didn't work?

20 THE COURT: Yes, the *Roberts* case, which kind of
21 gets brushed aside in the reply has been cited with
22 approval by the BAP and that was --

23 MR. GOLUBCHIK: I --

24 THE COURT: -- in Eastern (indiscernible) --

25 MR. GOLUBCHIK: I believe in the *Roberts* case

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21

1 there was actually a formal objection by the lender, which
2 is different.

3 THE COURT: *Roberts* states -- and again, the BAP
4 citing to *Roberts* in *East Capital View Development* states,
5 "363(f)(2) requires unequivocal manifestation of the
6 lienholders' affirmation."

7 MR. GOLUBCHIK: Okay. So we had -- this is the
8 *Roberts* case out of Michigan, correct?

9 THE COURT: Let me see where that was from. My
10 apologies.

11 MR. GOLUBCHIK: I have 249 B.R. --

12 THE COURT: Not -- no, I'm -- yeah, 249 B.R. 152.

13 MR. GOLUBCHIK: Yeah, I'm looking at it. It's
14 from the Western --

15 THE COURT: Yeah.

16 MR. GOLUBCHIK: -- District of --

17 THE COURT: Okay.

18 MR. GOLUBCHIK: Our position is the local BAP,
19 while BAP is not binding --

20 THE COURT: Um-hum.

21 MR. GOLUBCHIK: -- it should be more persuasive.

22 THE COURT: Okay.

23 MR. GOLUBCHIK: But at the end of the day if
24 that's the supposition of the Court -- I wanted to take a
25 look at -- one second -- 363(f)(1).

Page

22

1 (Pause)

2 Yes, Your Honor. At this point if you disagree
3 with the theory that if you did not file anything it should
4 be viewed as non-consent, as opposed to implied consent. I
5 will dig through it. I will dig through it and then -- and
6 then when I respond because I know that there is a Ninth
7 Circuit case that we saw.

8 THE COURT: Well, you cite to *ACCEL Concrete*.

9 MR. GOLUBCHIK: Correct.

10 THE COURT: That was a defective notice case and
11 I think what you're really citing to is a footnote. But in
12 any event, my question was simply if (f)(2) doesn't work as
13 to all the mechanics liens, is there an (f)(5) argument or
14 something else?

15 MR. GOLUBCHIK: Well, yes, Your Honor. Look, if
16 there's a foreclosure, the -- whoever succeed -- for
17 example, Hankey as a foreclosure sale. Hankey wipes out
18 everyone before, but Hankey doesn't wipe out the mechanics
19 lien creditors. Hankey would have to pay them off. That
20 debt is still there so they can receive funds. It's a
21 reverse process, but it's not the mechanics lien creditors
22 are left out in the cold. They'd be paid by Hankey.

23 THE COURT: Okay.

24 MR. GOLUBCHIK: Okay. So that's that as to
25 (f)(4). And then going back to -- no, I'm sorry. That's

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23

1 as to (f)(5).

2 THE COURT: You went through receivership and
3 foreclosure on the senior prepetition.

4 THE COURT: And the plan as well. Alternative is
5 we have ability to foreclose a plan of reorganization.
6 Under 506, the secured -- the amount of secured claims
7 would be only as to the value of the collateral. Any
8 unsecured claims would go down to be part of the unsecured
9 creditor pool and you can have a cram down plan of
10 reorganization. It's just a separate proceeding that could
11 be done.

12 But I think that the easier way to have Yogi and
13 Mr. Shinderman just fall into (f)(4) where we've asserted
14 *bona fide* dispute to which there was no opposition.

15 So after that, Your Honor, two things. One is --
16 and I mentioned the public policy. It's not that anyone
17 asserts that we did something or a seller did something.
18 I'm just term -- that the seller did something that is
19 inconsistent with Your Honor's order or the process. We
20 went forward. We had hearings. We had testimony and the
21 court ordered the process and it was followed and this is
22 where we ended up. So there is an interest in preserving
23 the integrity of the process and the auction so that in the
24 future interested parties don't say, wait a second,
25 auctions really mean nothing; unless we have an auction

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1 before the judge, this third party auction process doesn't
2 work and I may not be interested in bidding.

3 The second and I think it's more of the bigger
4 picture and it was touched on at the last hearing, to the
5 extent that there is a concern about looking after the
6 unsecured creditors because that's always the case,
7 although it's not within 363(b) or (f) specifically, I
8 think this auction is the best chance for having a recovery
9 for unsecured creditors. It was addressed by Mr. Newman, I
10 believe, at the last hearing that this buyer's premium that
11 was paid where the estate received nine-and-a-half percent
12 of the sale price, is not subject to collateral because it
13 was not from the seller's side. It was not from the real
14 estate side.

15 For purposes of this hearing, I don't think it's
16 necessary to address or resolve it. I don't think you have
17 enough before you to deal with it, but we -- remember, we
18 have secured debts close to 200 million dollars all in. In
19 order for unsecured creditors to share in everything, it'd
20 have to be probably over 70 million dollars more, which is
21 not there, 141 with the buyer's premium, cost of sale.
22 Definitely over 60 million dollars, which based on what
23 transpired is not realistic.

24 So the unsecured creditors may be out of the
25 money, at least from the sale. There are other claims of

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1 cause of action, but that's -- that's not a certainty like
2 a sale is a certainty.

3 But one thing we have here, whether technicality
4 or what we have almost 12 million dollars that was paid
5 pursuant to a contract between the buyer and the
6 auctioneer, not the estate, which is available to be dealt
7 with at a future time. Of course, arguments will be made
8 that the purchase price was adjusted based on this
9 commission and that's something that will have to be dealt
10 with. I don't know the answer to it, but I'm just focusing
11 on based on this property and the sale of this property,
12 the best chance of unsecured creditors to receive a
13 recovery is to have this technicality of a buyer's premium
14 available.

15 So with that, I have nothing else and I'll focus
16 on (f)(5) while other people are doing their closings.

17 THE COURT: Okay. Let's go to the objections
18 that were received. I'll start with those.

19 MR. BREGMAN: Excuse me, Your Honor, as a point
20 of order I'd like to be heard in support of the auction and
21 it might be helpful just to group those in support
22 together. If so, I'm prepared to --

23 THE COURT: That was --

24 MR. BREGMAN: -- tell it.

25 THE COURT: -- putting you.

Page

26

1 MR. SHINDERMAN: Your Honor, I'm not sure that
2 Mr. Bregman has a standing as the receiver. They don't
3 have a role in the bankruptcy case.

4 MR. BREGMAN: We represent -- Your Honor, our
5 firm represented Hilldun Corp., a five million-dollar
6 secured creditor and it's on Hilldun's behalf that I'm
7 appearing today.

8 MR. SHINDERMAN: I -- my apologies, Your Honor.
9 I thought they represented the receiver.

10 THE COURT: Thank you.

11 Well, then we'll move on and begin with those in
12 support of the sale then. Mr. Bregman, briefly.

13 MR. BREGMAN: Yes, briefly. Thank you, Your
14 Honor. Again, Jerrold Bregman of BG Law on behalf of
15 Hilldun Corp. We are a five million-dollar secured
16 creditor. We filed a time -- timely filed a proof of claim
17 to which there's been no objection filed.

18 We support the Court ordering a sale for 250
19 million dollars, but since the Court does not have that
20 power, our request is that the Court approve the sale
21 motion that's before it, the sale that followed a highly
22 publicized process conducted in good faith by experienced,
23 capable professionals. It even included a power bid -- new
24 term for me -- that brought an additional six million
25 dollars into this case.

1 The objectors are not offering to protect the
2 estate from the downside risk of losing this buyer and
3 obtaining less at a future sale or to pay the costs of
4 additional interests, fees, cost of additional delay. They
5 are taking the classic out-of-the-money gambit of gambling
6 with other people's money. It's not fair. It's not
7 appropriate under these circumstances.

8 Our client's position is based on the salient,
9 indeed, we submit, dispositive fact that there is no
10 evidence presented of any other bidder who -- whether one
11 participated or who showed up afterwards in all this time
12 and the auction was delayed a little bit to allow more
13 time, more exposure, all of which occurred. There's no one
14 here other than a buyer who's prepared to pay the market
15 price of 126 million dollars for this property.

16 Your Honor, wishing does not equal value. Market
17 set value, pricing is set by supply and demand with proper
18 exposure. That's what we have here today. I wish the
19 price were higher. Of course, everyone does, but it isn't
20 because that's not the market price. This has been a fair
21 process. If there had -- if there were defects in the
22 process, I get it. If there was interested parties, side
23 deals, some clandestine activity or bad faith shown, none
24 of that is present here. This is a good faith deal. It's
25 the market price and it should be approved on that basis.

Page

28

1 None of us has a crystal ball, but we have before us now a
2 good faith *bona fide* fair market value offer that should be
3 accepted.

4 Lastly, I also want to point out that my client,
5 whose secured claim also is out of the money supports this
6 closing because it brings about 12 million dollars in for
7 unsecured creditors. This is the carveout. This -- the
8 negotiated commission has been agreed to be split to give a
9 12 million-dollar chunk for unsecured creditors in this
10 case. Well, it's true in every case that the cost of
11 realtors and other costs are a cost of the property.
12 That's appropriate. That was a cost here, but the debtor's
13 counsel and the debtor's professionals who were able to
14 negotiate a kick-back carveout for the benefit of unsecured
15 creditors all in plain sight with full disclosure and
16 that's a wonderful thing for unsecured creditors. We'd
17 like to see that come into the estate for the benefit of
18 unsecured creditors. I recognize that issue is not
19 directly before the Court today, but what is before the
20 Court is 126 million plus and the plus includes this 12
21 million dollars.

22 So for those reasons, Your Honor, we respectfully
23 urge the Court to approve the sale and capture this bird in
24 the hand, which is a bit of a cliché and it was referred to
25 last time, but it's super true. That's the issue. We have

Page

29

1 a buyer. We'd like to see it closed. Thank you very much,
2 Your Honor.

3 THE COURT: Thank you.

4 Next -- I'm going with my list here then of who I
5 think is speaking in support of the sale. Mr. Smith.

6 MR. SMITH: Thank you. I did want to take this
7 opportunity to inform everybody at the UCC issue we didn't
8 get to Friday. The UCC process is through the mail. If
9 it's approved, it's still six to eight weeks. If it's not,
10 it can be redacted and take a very long time, but I do have
11 a copy of the unfiled UCC for all interested parties. The
12 email address is available.

13 I think the motion should be approved. It left
14 an opening for an overbidder. From what the record shows
15 it appears that there is a 500 million-dollar overbidder.
16 Not sure how that got lost on everyone, but everyone was
17 served lawfully. It's a certified amount. The money has
18 been deposited with the Court. I think it should be
19 approved based on what Mr. Golubchik filed. It's there.
20 Let's get it done and pay everybody.

21 THE COURT: Thank you.

22 Mr. Geher?

23 MR. SMITH: I yield.

24 THE COURT: Thank you, sir.

25 Mr. Geher.

Page

30

1 MR. GEHER: Thank you, Your Honor. Your Honor,
2 you spent a lot of time with us on Friday and I don't want
3 to rehash Friday with you. I'm sure Your Honor, like many
4 of us, spent a good amount of time over the weekend going
5 over what happened, what didn't happen, what was said and
6 what wasn't said. So I don't want to go through and repeat
7 everything I said to Your Honor last Friday. It is all
8 applicable and I'll incorporate it by reference, as lawyers
9 like to say, and move on.

10 Your Honor, just tagging on to Mr. Golubchik and
11 raising what the salient points are, as I believe it's
12 important to Your Honor to approve the sale as required by
13 the Code. I think the 363(b) issue, as Mr. Golubchik put
14 his finger on it, is the issue of whether the price is
15 adequate. And as I said on Friday, the adequacy of the
16 price is not to be measured against the debt of the debtor.
17 It's to be measured again what is this property and has it
18 received a fair value.

19 Your Honor heard a lot of testimony and argument
20 last Friday. What Your Honor did not hear was anybody say
21 that, gee, you never advertised it here and you didn't
22 contact this person. Not one identifiable issue with
23 marketing. It was just like somebody was saying, that
24 costs too much. I'm not telling you what the problem is.
25 This isn't like pornography, you know it when you see it.

1 This is we have an asset. It was marketed
2 extensively. We heard about it being on the Super Bowl
3 right before the game. People flying to foreign countries.
4 People going through their Rolodex of million-dollar buyers
5 in this space. It was clearly adequately marketed. Thus,
6 if it was adequately marketed, the right people saw it and
7 if they wanted to buy it, they knew about it and they
8 showed up if they wanted to pursue it and they didn't show
9 up if they didn't want to pursue it.

10 We had very few auction bidders as -- excuse
11 me -- as expected and predicted in testimony given to this
12 Court. So since it was marketed properly and advertised
13 it, right, people showed up and they bid what it was worth.
14 It is not for us or anybody as a lawyer to say that's not
15 the right place. A lawyer has no idea what the right price
16 is. He could tell us the law. He's not a real estate
17 person. He didn't put his money in it. He thought it was
18 such a great deal, they could have bought it. They didn't.

19 So the price is clearly adequate. It may be
20 disappointing. That doesn't mean it's not adequate, that
21 adequate value, true value was not obtained. Nobody has
22 told this Court there is any collusion. Again, what this
23 Court didn't hear is speaking volumes.

24 So we had a non-collusive, properly marketed
25 auction that produced a winning bid with no collusion, no

Page

32

1 irregularities. The three-minute issues were fully
2 explained to this Court. No auction if it says we're
3 ending at 4:00, stops at 4:00, if the final guy hits the
4 button right at 4:00 and somebody else wanted to go right
5 behind him they don't say, sorry, buddy, you're out of luck
6 because he hit the button at 4:00, not you.

7 So properly marketed. People showed up that he
8 bid without collusion. So the price is clearly adequate.
9 So can we sell it free and clear of liens. My client
10 consents. So the lien of Hankey is not an issue.

11 THE COURT: That pre -- on the prepetition loan?

12 MR. GEHER: The consent for all of our debt. The
13 DIP loan, the receiver loan and the prepetition loan, all
14 three loans we've ever had, we want to wear we consent. So
15 the Hankey loans consent.

16 We have Inferno. Inferno has objected, but
17 there's clearly a good faith dispute as to Inferno's lien,
18 but the document it signed saying we don't get paid on our
19 claim and our debt until other construction loans are paid
20 and unpaid costs of construction. Not mechanics lien.
21 Unpaid costs of construction.

22 I believe Mr. Golubchik's interpretation of that
23 plain language is correct that it could cover unsecureds,
24 but we don't have to decide that today. Objectively, does
25 that document in and of itself rise to the level of their

Page

33

1 being a good faith dispute as to Inferno and I believe the
2 inescapable answer is yes. Court doesn't have to decide.
3 We canvassed the issues. Is it objective good faith
4 dispute? If the answer is yes, end of story, move on. So
5 there's a good faith dispute as to Inferno it can --
6 property can be sold free and clear of Inferno's claim.

7 THE COURT: Mr. Geher, are you saying there's a
8 dispute as to amount or priority?

9 MR. GEHER: Yes, to both.

10 THE COURT: Okay. But not as to existence of a
11 security interest?

12 MR. GEHER: It does have a recorded deed of
13 trust. I'm not going to tell the Court that document
14 recorded in the county recorder's office does not exist, so
15 on its face it has a lien.

16 The extent, validity and priority of that lien
17 remains to be determined because if all their money maybe
18 it's a fraudulent obligation, as I explained to the Court
19 on Friday and I won't go through all that again, the whole
20 thing is gone. Good faith dispute. We don't have to say
21 who's right or who's wrong or what the odds are. Is there
22 a good faith dispute and I think the document in and of
23 itself creates the good faith dispute. Second -- so as to
24 Inferno, as well as they loan money to other property, so,
25 you know, those two issues alone, good faith dispute.

1 Yogi has a similar good faith dispute because, as
2 we see from the proof of claim, the evidence in front of
3 the Court, their loans made to Crestlloyd, funded other
4 properties owned by other LLCs owned by Mr. Niami.
5 Their -- that is a fraudulent obligation that the debtor
6 would dispute. Again, is it a good faith dispute? I think
7 based upon what the debtor has received from Yogi at this
8 point and hasn't even gotten everything notwithstanding
9 these many months, it said it still was missing documents,
10 about a couple million dollars' worth of loan proceeds.
11 It's a good faith dispute. Again, we don't have to
12 determine the dispute today. Is there subjectively such a
13 dispute? We believe the answer is yes. Thus, the Yogi
14 claim that's being subject to a good faith dispute can
15 be -- property can be sold free and clear.

16 Mr. Bregman's client has already stipulated that
17 his claim is subject to a good faith dispute. That leaves
18 all lienholders with the exception of property taxes who
19 nobody disputes and will be paid upon the close of escrow
20 and mechanics lienholders. We have two mechanics
21 lienholders today who consent if this Court approves the
22 sale and they'll be paid. We have other mechanics
23 lienholders who have had notice, know exactly what's
24 happening. We're told in a notice if you don't object it
25 can be deemed consent. I understand the Court may or may

Page

35

1 not have an issue about affirmative consent versus consent
2 by not filing an opposition which one would say if one
3 doesn't file an opposition they must consent. If you're
4 not consenting you've got to stand up and say something
5 somewhere along the line they haven't done so.

6 Notwithstanding, Your Honor, under 363(f)(1), the
7 mechanics liens can be sold free and clear because as part
8 of the sale motion Mr. Golubchik's client, Crestlloyd
9 attacks an order from the California Superior Court
10 appointing the receiver and giving the receiver duties and
11 obligations and rights. And one of those rights afforded
12 to the receiver pursuant to that order was the right to
13 sell the property free and clear of liens.

14 The Superior Court had already determined pre-
15 bankruptcy that can happen. So applicable non-bankruptcy
16 law like a receiver order in and of itself. The property
17 can be sold free and clear of the receiver order.

18 Additionally, under (f)(5) Hankey -- (f)(5) talks
19 about an entity that could be compelled. Not must; could
20 be. Hypothetically could this happen. And when this case
21 was -- this case today has a DIP loan, as well as -- of my
22 client as well as receiver loans of my client, both of
23 which by their terms and court orders, one an order of this
24 court, another an order of the Superior Court, that --
25 pardon the phrase -- trumps and primes all other liens.

1 So if no sale is going to happen here or be
2 approved, we're never going to approve the sale because
3 there will never be enough money to sell free and clear
4 and, thus, Hankey under its DIP loan can and will foreclose
5 and assuming that as -- and correctly, I believe, that the
6 value given in the sale would be paid, they'll be paid.
7 The mechanics lienholders, the waterfall will happen and
8 they'll be paid and they'll be compelled to accept it as
9 far as the waterfall goes. They get something or nothing.
10 They're compelled to accept that in satisfaction of their
11 claim and, thus, under (f)(1) we can sell free and clear --
12 excuse me, under (f)(1) and (f)(5) through the foreclosure
13 sales of the Hankey DIP loan and the loan in and of itself
14 from the -- or excuse me, the receiver order that gave the
15 right to sell free and clear, we meet the standards for
16 every lien of record here for this court to determine that
17 this property can be sold free and clear of all liens.

18 And let's also remember what Ms. Williams told
19 this Court. She said that if this sale is not approved,
20 based on her market experience, which was extensive in
21 selling this type of property, which is what she does. She
22 doesn't sell my house, houses like I live in; she sells
23 these types of homes and she said this will be viewed as a
24 failed sale. Her word was failed. Not mine. Failed and
25 we will get less.

Page

37

1 So, Your Honor, from a strictly legal
2 perspective, has 363(b) and (f) been complied with, and the
3 answer is yes. And that's all this Court needs to ask and
4 get an answer to. Ukraine, it's nice, it's important.
5 That's not what this Court needs to know to decide. This
6 Court does not need to become a political analyst and try
7 to figure out when the world gets better from the present
8 strife. This Court doesn't need to be an economist to
9 figure out maybe inflation and interest rates gets better.
10 That's not for this Court or for any lawyer to be
11 speculating about. We have to deal with what the facts are
12 and what's before us and the facts tell this Court that
13 this sale should be approved because it's a true *bona fide*
14 sale that was non-collusive that brought value and it could
15 be sold free and clear because 363(f)(1) -- whether (f)(1),
16 (2), (4) or (5) -- we all know (3) doesn't apply. But as
17 to every other lien we could use (1), (2), (4) and (5) and
18 the sale should be approved. Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. GEHER: Oh, one last thing, Your Honor. I'm
21 commenting on -- again, I want to focus on what's
22 important. The buyer premium issue, where it lands, not
23 for today. Just like the disputes, not for today. Thank
24 you.

25 THE COURT: Okay. Thank you.

Page

38

1 I thank, Mr. Newman, even though obviously you
2 are in support of the sale, I'd actually like to turn to
3 you before we go back to Mr. Golubchik because I think that
4 perhaps some of those who oppose the sale may raise 363(m)
5 issues and I want you to have an opportunity to respond to
6 those. So, Mr. Newman, I think I'm going to -- if it's all
7 right with you -- put you a little bit more toward the end
8 of the commentary.

9 So next -- Your Honor

10 MR. NEWMAN: Thank you, Your Honor.

11 THE COURT: Thank you.

12 Next, I think we have some oppositions.

13 Mr. Shinderman.

14 MR. SHINDERMAN: Good afternoon, Your Honor.

15 Mark Shinderman, Millbank, on behalf of Yogi Securities.

16 Your Honor, I'll be short and to the point.

17 Mr. Roffers testified on Friday in response to
18 the point that he has a minimum reserve on a property less
19 than two-tenths of a mile away that had never been
20 disclosed to the Court. But he wasn't opposed to a minimum
21 bid, just the wrong minimum bid, but that's not what he
22 suggested at the bid procedures hearing. And you were
23 there and you have your own impression, but the testimony
24 was no minimum bid. The dispute Mr. Williams' opinion --
25 Mr. Williams' opinion, the other broker's opinion about

Page

39

1 that there should be a minimum bid was never presented to
2 you. It was given to you as a *fait accompli* that there
3 should be no minimum bid. On Friday that's not the
4 testimony that you heard.

5 To be fair, what Mr. Roffers said at the bid
6 procedures hearing is that setting a minimum bid might
7 scare away people who would bid low, but he wanted people
8 to bid low because he wanted to have more bidders and
9 create a competition.

10 But the actual opposite happened here. The 50
11 million-dollar low bid by the buyer set out there
12 uncontested for two-and-a-half days suggesting that the
13 property was worth a lot less. Remember, again,
14 Mr. Roffers testified that setting a bid too high would
15 tell people they'd have to bid too high to compete. Well,
16 Mr. Roffers -- the buyer comes in with a very low bid.

17 So I submit we have just the opposite the
18 situation of what Mr. Roffers had explained to us would be
19 the problem at the first hearing. And then we also come
20 back to the 295 million-dollar asking price of what the
21 brokers were telling people. I submit to you that that
22 caused confusion. Right? Mr. Roffers said, "We don't want
23 to set a minimum too high because that might keep people
24 away from the bid and we don't want to set it too low
25 because it may discourage lookee-loos."

1 So here we have a situation we had a low bid sit
2 out there for two days and we had asking price of 295.
3 Nobody and nobody testified that anyone understood that a
4 bid of 160 or 170 million dollars may have been in the
5 ballpark. That guidance to the marketplace wasn't there.
6 It wasn't the asking price and there was no minimum.

7 At the bid procedures hearing Ms. Andrassy
8 clearly indicated that a bid would need to clear the
9 secured debt to get consent and that didn't happen. And
10 Your Honor was very clear to everybody that you would have
11 the ability to review the sale. It wasn't present -- the
12 auction was not presumptively game set, match. And
13 Mr. Golubchik -- and this is on the transcript of pages 32
14 to 33 -- noted that the auction wouldn't be the be-all/end-
15 all. And Mr. Roffers at page 38 said, "Your Honor,
16 everyone understands we have to come back to court."

17 So where does that leave us? Have five points.
18 First, it's not clear that we achieved fair value.
19 Auctions do not necessarily represent fair market value.
20 We should have had a minimum bid, just like the property
21 two-tenths of a mile away. Mr. Roffers confirmed, one of
22 the brokers confirmed that they're using a minimum bid.
23 Now, you'll remember they kept fighting with us, but
24 actually they conceded that there is a minimum bid.

25 Second, the price per square foot is \$1300 a

Page

41

1 square foot, which is very below market average. We heard
2 testimony from Ms. Williams that we would have expected a
3 price of \$2500 or more per square foot. But without being
4 asked she said the reason was, is because we didn't have a
5 certificate of occupancy.

6 But, Your Honor, the difference between 1300 and
7 2500 is 1200 or about 48 percent of the value. So we're to
8 believe that the lack of a certificate of occupancy cost
9 the property 48 percent less -- you know, hurt the property
10 by 48 percent or approximately half the selling price. At
11 \$2500 a square foot assuming 100 is 6,000 square feet
12 probably should have sold for about 256 million dollars.
13 The 137 million dollars, right, suggest that the C of O,
14 the head winds that Mr. Roffers kept talking about, cost
15 132 million dollars. That's just not credible, right. The
16 C of O is the last step. Yes, it could be \$5.00, it could
17 be a new roof, it could be a new elevator, but there's no
18 evidence before you that it's half the property. Half of
19 the value of property should impaired. What we do know,
20 what the testimony is, is the property sold or is selling
21 for approximately half of what the per square footage
22 should be.

23 Second, secured creditors have not consented to
24 the sale. Third, you heard conflicting testimony on Friday
25 about foreign buyers and the geopolitical catastrophe.

Page

42

1 Ms. Williams said unequivocally that foreign buyers did not
2 matter, but that was not the testimony of Mr. Roffers at
3 the initial hearing where they hoped to get worldwide
4 interest or one of the brokers who went to France or Mr.
5 Williams' testimony in his declaration that he acknowledged
6 that the war did hurt and cause disruption.

7 But here's why this point matters. No one
8 bothered to suggest that the debtor or the parties in
9 interest or this Court that we should bump the auction a
10 month to see what would happen, as would have been prudent.
11 The conflict caused a major pause in reset, just like any
12 other geopolitical or pandemic would have done. What you
13 do is you wait. Things may not get better. Things may not
14 improve, but things will normalize. Things will accept the
15 situation. But what you don't do is in the midst of the
16 turmoil, in the midst of the uncertainty of something that
17 was unfathomable, you don't pretend that the situation is
18 normal because it is not.

19 THE COURT: Is there a difference, Mr.
20 Shinderman, between picking a 30 to 60-day pause before the
21 March 3rd auction and taking a 30 to 60-day pause now
22 from --

23 MR. SHINDERMAN: Yes, because there's a big --

24 THE COURT: -- after the sale hearing?

25 MR. SHINDERMAN: There's a big difference. We

Page

43

1 now have a market -- we now have a real proposal out there,
2 137 million dollars that we had hold up to everyone and
3 say, this is the price you have to beat. And I'll come
4 back to this at the very end about what I think we should
5 do, Your Honor, but the idea is we didn't have a minimum
6 and we had an asking price of 295. So we either scared
7 people away or we anchored them too low. But now the world
8 knows what they have to beat. That's number one.

9 Number two is today, you know, three, four weeks
10 into the dispute the world is back to normal. The stock
11 market is back up. It's down a little bit today, right.
12 Housing prices are going up, but things have normalized.
13 They've -- and I hate to say this. They've normalized the
14 geopolitical mess in the world and people are trying to
15 figure out what that means.

16 But what they didn't understand, just like the
17 analogy is to COVID, what we didn't understand when it
18 first happened what the disruption will be. But eventually
19 people figure out how to normalize things, so that's what
20 we're doing now. So, yes, I do think it matters.

21 The fourth of my five points is a review of the
22 transcript and your reservations lets everyone know. And I
23 want to be fair to Mr. Newman's client that there was a
24 chance that just because they were a high bidder doesn't
25 mean they were going to be approved today. But everyone

Page

44

1 talks about fairness and, you know, the person did what
2 they were supposed to do, the would-be buyer. But
3 everyone, including the debtor's counsel, Mr. Golubchik,
4 repeatedly said, it will be subject to your approval and
5 Your Honor had the right to not approve for various
6 reasons.

7 Fifth, Mr. Geher had something on Friday to the
8 effect that secured creditors were playing games here and I
9 submit it's just the opposite. If Mr. Geher's client,
10 Mr. Hankey, and the buyer want to obtain the consent of the
11 secured creditors, they need to contribute more people into
12 the pot to make this work, and we made that offer over the
13 weekend and people chose not to take it up.

14 I won't disclose any settlement communications,
15 but clearly the game here was to put more money on the
16 table for people and that hasn't happened. Mr. Hankey and
17 the buyer had that option, right? If the buyer wants the
18 property he knows what he has to do. If not, the property
19 can go to foreclosure. Mr. Hankey doesn't want to go
20 through foreclosure he knows what he has to do. The
21 secured creditors have no reason to accept the sale that
22 doesn't pay them anything for only a fraction of what
23 they're owed.

24 So with that, I want to turn to a few
25 housekeeping items. I want to be very clear. Yogi

Page

45

1 Securities filed a proof of claim. There's not a single
2 objection to that claim on file. What the motion itself
3 said was the debtor may have a basis to object, not that
4 they did object or the basis for that objection but that it
5 may object. That's not a dispute, number one.

6 Number two is there's no question that we have an
7 interest, a recorded lien on the property.

8 Three, there's no evidence -- Mr. Geher cited
9 evidence -- there's no evidence that the funds, the
10 proceeds of the Yogi loan went to any other property.
11 Other properties cross-collateralized loan. What I
12 represented to the Court on Friday was that we've accounted
13 for direct deposits of 27 to 28 million to Crestlloyd
14 account or to Surfside Realty, the escrow agent, for
15 Crestlloyd. Some of them reference Crestlloyd, some of
16 them don't reference anything. Those need to be checked by
17 the debtor, but that's not a dispute. No one has said, we
18 object to the claim. The fact that there may theoretically
19 be some claim somewhere, the kitchen sink of claims, is not
20 a dispute. We have a *prima facie* case. No dispute.

21 But the uncertainty about who's owed what
22 complicates matters. Mr. Hankey hasn't conceded that part
23 of his claim is entitled to a fourth priority security as
24 the debtor noted. The debtor knows there's a question
25 about mis -- the accounting of Mr. Hankey's claim and that

1 effects what value was left over for other secured
2 creditors that would be junior to Mr. Hankey's first
3 secured claim.

4 Similarly, a lot has been said about this issue
5 about the buyer's premium but the -- excuse me, the
6 auctioneer's refund, but the auctioneer's refund is
7 proceeds of the real property. If the -- if instead of
8 having this fiction that it's a 12 percent commission, but
9 we'll give back ten percent, they simply charged two
10 percent. Let there be no question. It was a fallacy. It
11 was done to help Concierge keep its 12 percent premium in
12 other deals, but everything here, every dollar here is the
13 proceed of real property. But the uncertainty that people
14 have introduced as that means that neither Yogi or Inferno
15 can know with a certainty what they're going to get. It's
16 complicated. It's confusing. But these things that other
17 people are raising only underscore that consent is not
18 forthcoming here because nobody knows what they're going to
19 get.

20 Now, ironically, the debtor in its moving papers
21 showed a water fall that all the proceeds of the sale were,
22 indeed, were available to Inferno and Yogi beyond
23 Mr. Hankey. Okay. They did not take the position in their
24 moving papers that the give-back of the auctioneer's
25 premium was for unsecured (indiscernible).

1 So that leaves me to choices. On behalf of Yogi
2 and I think Inferno, but Ms. Andrassy will speak, we're
3 okay if the sale is not approved. And contrary to Mr.
4 Bregman's position the people whose ox are being gored, the
5 people who are taking the risk here are Yogi and Inferno.
6 Right now the way the money breaks out under
7 Mr. Golubchik's analysis in his motion, it either goes to
8 Inferno or to Yogi depending on how exhibit -- the fight
9 over Exhibit 6 comes out.

10 But both Yogi and Inferno are willing to risk
11 that recovery because there's insufficient proceeds to make
12 this a worthwhile endeavor for consent. Mechanics liens
13 will still take first in a foreclosure, just like property
14 tax. All administrative claims have been paid and there's
15 no indication that there's value above the amount of
16 secured claims such that the unsecureds are entitled to
17 anything and, of course, unsecureds are not mentioned as
18 part of the 363 analysis.

19 So, Your Honor, the people really have skin in
20 the game. Yogi and Inferno are willing to risk this sale
21 not closing. Against that backdrop we reiterate that we're
22 prepared to make a 15 million-dollar DIP loan to pay off
23 the 12 million-dollar DIP and extend the sale process or,
24 as you heard on Friday, the estate still has about two to
25 three million dollars of availability under the existing

Page

48

1 Hankey DIP loan that can be used, so lets -- lets the
2 brokers try to beat the 137 million dollars that's out
3 there.

4 And so we have no -- so we have no issues, we
5 could make the proposed buyer the stalking horse and give
6 him adequate protection and give him liens so that
7 Mister -- that the would-be buyer will sit here for the
8 next 45 to 60 days and if he's overbid he'll get a topping
9 fee and reimbursement of his costs or if the failure to
10 come forward in 45 to 60 days the sale will be allowed to
11 proceed. But that's how we can tease out from the market
12 what the real value is given this uncertainty.

13 Lastly, Your Honor, and I really hate to do this,
14 I find this one of the most distasteful parts of my job,
15 but I really need to get into the testimony that was given
16 because I've really limited my questions to three things.
17 The minimum bid, the effect of foreign buyers and the price
18 per square foot. But you heard and I -- you'll recall from
19 Friday that the brokers and Mr. Roffers went far beyond the
20 questions I asked. They couldn't wait to explain them
21 away. On occasion they refused to answer my question and I
22 had to keep coming back.

23 So I looked at the testimony from Friday and I
24 said, thus doth protest too much, right? First, the
25 minimum bid you heard on Friday is a nuanced discussion.

Page

49

1 That's not what was presented to Your Honor and other
2 parties in interest at the bid procedures.

3 Second, you heard testimony that was an
4 extraordinary marketing effort. No one explained to you
5 what that effort was, that it cost more than 10 million
6 dollars. That can't be right. The DIP loan was 12
7 million. It wasn't paid out of the DIP loan. And if the
8 property sold for 200 million dollars, the total amount of
9 brokerage and auction commissions would be less than eight
10 million dollars. There's no way ten million dollars was
11 spent. It was a false representation. It's hyperbole, but
12 there's no evidence for that.

13 You heard Mr. Roffers refuse to answer a very
14 simple question. If there's no sale would you and the
15 brokers be paid a commission. I'd asked that four times
16 before they conceded, of course. Well, that's what it is.
17 I get it. The brokers work hard. Okay. The auctioneer
18 works hard. They're entitled to something at the end of
19 the day but that doesn't mean today is the end of the day,
20 right. They have to finish the job, right, and that's
21 what's going on here.

22 You heard inconsistent testimony on the foreign
23 buyers. Ms. Williams said unequivocally, no foreign
24 buyers. Well, first of all, it's not true. Second, we
25 need to have a full evidentiary hearing where I can bring

Page

50

1 in other witnesses to say that she helped sell properties
2 with foreign buyers. But you heard testimony from Mr.
3 Williams that there was disruption with foreign. You heard
4 from Mister -- the other broker that they want to France to
5 get buyers. You heard testimony from Mr. Roffers they were
6 getting interest from all over the world. So again,
7 there's an inconsistency in this rush to get this over
8 with.

9 You heard finally reluctantly -- reluctantly. It
10 took five minutes to get the answer that, yes, there's a
11 minimum bid on a property two-tenths of a mile away. You
12 heard about the price per square foot, that it was impacted
13 by the certificate of occupancy. But no one said it's a 50
14 percent discount to value, which this seems to have been.

15 You heard testimony that people speculated. And
16 given where we are in the hour and Your Honor will discount
17 and weigh testimony accordingly, we'll talk about evidence
18 later, we didn't make every objection about speculation, et
19 cetera, because what was the point. You know, we all know
20 the rules. But no one said it's not possible to generate
21 more money. No one said it's impossible and no one is not
22 going to bet their reputation that it's not possible to
23 generate more now that we know what the playing field is.

24 We also heard from Mr. Horoupian on the cross-
25 examination of Mr. Roffers that in March of 2021

Page

51

1 Mr. Roffers tells Ms. Niami that the property will get more
2 than 256 million. Not may. And at the time there was no C
3 of 0 and the property was in the condition it was in but he
4 said, we will. Again, this goes back to the confusion of
5 cause by the debtor's motion and the schedules and the
6 asking price.

7 And finally, and this is the issue that I have
8 the biggest problem with is nobody suggested to delay the
9 auction until the world became normalized. There is no
10 testimony that anybody suggested -- and maybe it's because
11 they wouldn't get paid, but no one suggested that given the
12 disruption on certainty of the market that we take the
13 pause for a week or two weeks. We took it. Remember when
14 I asked Ms. Roffers, "Would you delay the motion?" He
15 said, "Yes." He delayed the motion because of the
16 condition of the property, but did not seek to delay the
17 sale of the property because of the geopolitical conflict
18 and that's very, very important.

19 With that, Your Honor, I want to turn to the
20 comments real quickly of Mr. Golubchik. What's the
21 alternative is not the question, but I give you the
22 alternative. The alternative is, make the buyer the
23 stalking horse, extend the process out. Mr. Geher's client
24 has two to three million dollars in the DIP. We'll replace
25 the DIP. But now that the world knows that the price is

Page

52

1 137 million, plus or minus, let's go ahead and tell the
2 world that he's got 45 to 60 days to be there.

3 Second, we could submit further briefly on 363(b)
4 and (f), but I think Your Honor is familiar enough with the
5 issues.

6 The bottom line is *Clear Channel* says what it
7 says. A secured creditor always has the right to
8 foreclosure, so it couldn't be the case of *Clear Channel*
9 that the mere ability to foreclose or have a receiver is
10 enough, otherwise *Clear Channel* means nothing.

11 And then a word about the evidence. Most of the
12 evidentiary objections to my client's declaration were
13 actually substantiated by the broker's. Conversations,
14 proffers and the like. So I think at the end of the day we
15 don't need formal rulings on there. We're relying on the
16 broker's testimony to collaborate that which we said.

17 But I would point out that this wasn't originally
18 set as an evidentiary hearing and we didn't do formal
19 discovery, right. So to the extent we have some
20 speculation about what could happen in the future, what was
21 proffered without any evidence whatsoever, either we need
22 to discount that, which I trust Your Honor will do, or we
23 do have further evidentiary work to do.

24 At the end of the day, I think there's enough
25 questions here that -- well, we know that the buyers

Page

53

1 haven't completely -- secured creditors haven't consented.
2 There is no dispute, not reasonable dispute, there's no
3 dispute before Your Honor suggested by anyone as to my
4 client's claim. My client does not consent to the sale.

5 For these reasons, Your Honor, we think that the
6 Court should deny the motion at this time. Thank you, Your
7 Honor.

8 THE COURT: Thank you.

9 Ms. Andrassy.

10 MS. ANDRASSY: Thank you, Your Honor. Kyra
11 Andrassy, counsel for Inferno Investment.

12 The evidence demonstrates that the auction was
13 poorly timed and resulted in a grossly inadequate sales
14 price of 43 percent of what the debtor and Hankey
15 represented to the Court that the property was worth, 48
16 percent of the listing price that was approved by the
17 Court, and 62 percent of the appraised value.

18 Everyone knows and knew that there were issue
19 with the property, including the lack of the C of O and
20 everyone knew those issues when they placed millions on the
21 property. So was everyone including the appraisal firm
22 wrong or was the sale process flawed and Inferno would
23 submit that it's the latter.

24 More time was required to adequately market this
25 property. The application to employ the real estate

Page

54

1 professionals is not filed until December. In December we
2 had a significant amount of rain and the testimony from
3 Friday was that there was significant water damage to the
4 property that had to be fixed before it could be shown.
5 Indeed, that's why there was a stipulation that was
6 submitted to the Court to extend the base by three weeks.
7 And why only three weeks? Because Hankey's DIP loan is
8 becoming due at the end of March.

9 In addition to the water damage issue, that
10 limited the amount of showings that could occur at the
11 property, it's uncontested that the war in Ukraine
12 negatively impacted the auction. The auction should have
13 been delayed so that it did not start four days after the
14 war began before things began to stabilize. If Mr. Saghian
15 is willing to stay under contract for another 60 days or
16 so, I join in Mr. Shinderman's proposal that you serve as a
17 stalking horse and we can give him bidding protections and
18 see if a higher offer can be received.

19 Yogi and Inferno have offered to put their money
20 where their mouth is and to make a new DIP loan, to take
21 out Hankey's loan and give the debtor a little more
22 breathing room. It also would give time to adequately
23 market the property in a more stable economic environment.
24 My client is confident that letting the brokers do their
25 job with adequate time will result in a higher price for

Page

55

1 the property and it benefits everyone. There's no reason
2 that the property had to be sold in what amounted to a fire
3 sale. Right now the only parties who benefit are the
4 brokers, the auction house and Hankey. Because they're the
5 parties who benefit from the proposed sale, their testimony
6 and arguments have to be deemed with some skepticism.

7 Much has been made about this buyer's premium and
8 whether it's going to benefit unsecured creditors. First
9 of all, the debtor has represented in its reply and it's
10 available to pay secured claims, but I'll note that even if
11 you characterize that rebate as personal property, well,
12 guess what, it's subject to Hankey's DIP lien. And you can
13 bet that my client is going to argue that Hankey is --
14 should have to marshal its assets, its collateral and look
15 to the proceeds of the buyer's premium before taking
16 proceeds from the sale that deplete my client's collateral.
17 Although I still believe, as I argued on Friday, that that
18 buyer's premium should be considered proceeds from the sale
19 of real property subject to the claims of secured
20 creditors.

21 Now, if the client -- Court is inclined to --
22 well, let me say one other thing about the 363(f)(4) issue
23 and like Yogi's lien, the issue with my client's lien is
24 not over the amount. Mr. Geher was represented to this
25 court wrongly that my client may have made loans -- some of

Page

56

1 the proceeds from my client's loan went to other entities
2 and that's simply not true and there's no evidence before
3 the Court that that is the case. There's no objection to
4 my client's claim. Much has been made of this memorandum
5 of agreement that the debtor attached as Exhibit 6 and that
6 goes to priority, not the amount of my client's lien or the
7 existence of the lien. And we heavily dispute how it's
8 been characterized, but the Court doesn't need to resolve
9 that. We will -- we're confident that we're going to prove
10 that it doesn't mean that my client agrees to subordinate
11 to all debt on the property. And in fact, that's belied by
12 the fact that my client had to sign a written subordination
13 agreement to Hankey Capital of 82.5 million left.

14 Now, if the Court is inclined to approve the
15 sale, my client objects to the payment out of escrow of
16 anything other than the commission, property taxes, closing
17 costs, the receiver certificate and the DIP loan. There's
18 questions about the calculation of the amount that that's
19 allegedly through Hankey Capital. And as Mr. Perkins
20 testified in his declaration, the 82.5 million-dollar loan
21 has not been verified and is subject to an account.

22 Now, what little documentation that I've been
23 able to obtain and my client has been able to obtain raises
24 far more questions than it answers. We can't even figure
25 out how it calculates if there's 113 million dollars owing

Page

57

1 with interest on a 82.5 million-dollar debt. My client
2 intends to conduct discovery on the amount of Hankey's
3 claim what the proceeds were used for and the extent of
4 Hankey's knowledge of misappropriation of funds and whether
5 Hankey's loan or portions of it are collateralized by a
6 second property.

7 So if the Court approves this, my client -- we
8 would suggest that maybe the Court hold a continued hearing
9 in a couple of weeks to figure out if there was some amount
10 that we could pay to Hankey that would be in -- we would
11 agree went into the property so that we can stop the
12 accrual of interest while the parties litigate their
13 dispute.

14 And to the extent that Hankey is authorized to be
15 paid any portion of it now it has to be subject to a full
16 reservation of rights, but again, we object to that.

17 There's also an issue with the mechanics liens
18 because our client feels the Court --

19 THE COURT: Hold on one moment. I'm going to
20 interrupt you for one moment. There is no recording
21 permitted of this proceeding. I have seen one individual,
22 Mr. Smith, holding up a phone more than once now. There is
23 no recording of this proceeding.

24 MR. SMITH: There's no recording. Text message.
25 Sorry. I'll be sure to keep it out of view.

1 THE COURT: Thank you.

2 Ms. Andrassy.

3 MS. ANDRASSY: There's also an issue -- thank
4 you, Your Honor. There's also an issue with the mechanics
5 lien because my client's lien was recorded in 2013. It was
6 incurred in connection with the acquisition of the real
7 property and the house that was on that property at the
8 time before any construction started on the property and
9 the Court, again, doesn't have to resolve this dispute.
10 It's my client's position that it believes it will prove is
11 that it only agreed to subordinate the Hankey's 82.5
12 million-dollar loan. It did not agree to subordinate the
13 mechanics lien holders, so we object to them being paid.

14 Now, the amounts of the mechanics lien holders
15 are owed cumulatively I will concede is not significant
16 when compared to the purchase price. It is significant
17 when you compare it to what's left. So for those reasons,
18 I echo Mr. Shinderman's comments about the inadequacy of
19 the sale price and the process and I would request that the
20 motion be denied.

21 THE COURT: Thank you.

22 I'm going to go to Mr. Rafatjoo next. I would
23 like to warn Mr. O'Dea, as well as -- I apologize. Give me
24 one moment here. I want to make sure I have everyone on my
25 list. As well as Ms. Lee DeVoll that given Inferno's

Page

59

1 position that Ms. Andrassy just again referred to, I'm not
2 consenting to payment of the mechanics lien. I would like
3 to hear argument as to that issue briefly from counsel. So
4 we'll go to Mr. Rafatjoo first, and then Mr. Horoupian, and
5 then I'd like to circle back both to Ms. Lee DeVoll and
6 Mr. O'Dea.

7 Mr. Rafatjoo.

8 MR. RAFATJOO: Thank you, Your Honor. Hamid
9 Rafatjoo of Raines Feldman for Nile Niami.

10 Your Honor, when the hearing started on Friday
11 things were not looking good for the debtor because the
12 Court focused on what everyone's been focused on, which is
13 that the sale price is grossly inadequate. And as the day
14 progressed, I don't know if it was fatigued or the
15 testimony. I personally felt that some of that wind may
16 have shifted based on the testimony of the brokers.

17 So I spent the weekend thinking about what was
18 that testimony, but it -- why did I feel like, you know,
19 things had changed. Why were we going off the path of
20 having another sale? And when you kind of sift through
21 that testimony and the fast talking and the buzz words, all
22 that stuff is peeled back. You take a look at that
23 testimony and you see that while people testified about
24 having tried to sell this property for years, they have not
25 been to the property until recently.

1 While people testified about having sold billions
2 and billions of dollars' worth of real estate, they have no
3 experience with auctions. While people talked about doing
4 world tours to attract international buyers, they have
5 flown to two countries and spoken to a total of four
6 people.

7 While people testified about years of experience
8 in selling ultra-luxury homes, they have no idea that the
9 lack of a C of O would suppress the sale price. Thus, they
10 want this court to rely on testimony of brokers who told
11 Nile Niami, Joe Englanoff, Ted Lanes, who's the ousted
12 receiver, Mr. Perkins, and this court who came before this
13 court and everyone said everything that they needed to say
14 to people to convince them that they could get well over
15 200 million dollars for this things, non-issue, let's just
16 ram this thing through, we're going to get it done. They
17 told everyone everything that they needed to hear to get
18 the listing. They told everyone everything that they
19 needed to hear to get their employment approved. They told
20 everyone everything they needed to hear to get the sales
21 process approved and now they're telling everyone
22 everything that they feel you need to hear to get the sale
23 approved.

24 Well, the first three proved wrong. They haven't
25 been to the house. The sale price didn't come nearly as

Page

61

1 high as anticipated. The auction was an absolute failure
2 and now we're supposed to rely on this fourth part of their
3 testimony.

4 Your Honor, based on the record in this case,
5 based on the testimony from the various parties, the sale
6 cannot be approved. We heard that Mr. Shinderman asked the
7 question of, do you think the timing of this auction may
8 have impacted things and the answer was no. So we are to
9 believe that the uber wealthy are not impacted by the
10 holidays because they apparently don't spend time with
11 their families. They don't get on their private planes and
12 yachts and go to their vacation homes. They instead stick
13 around and focus on the next house to buy. That cannot be
14 reality.

15 A few months after having said and done whatever
16 it took to get their listings, laser focused on that
17 commission and the tag line that they were the broker for
18 selling the one, they took the house to auction four days
19 after the war started. They expect this Court to believe
20 that the uber wealthy are not impacted by holidays, they
21 are not impacted by market fluctuations and the possibility
22 of World War III.

23 What the brokers are selling is a fantasy that
24 they did nothing wrong, nothing impacted the sale process
25 and that they did everything right and it was just purely

Page

62

1 that lack of a C of O. That was the only thing to blame
2 because while the uber wealthy don't celebrate the holidays
3 and don't care about war and don't care about market
4 fluctuations, the thought of having to spend a few million
5 dollars to finish a house, that is crippling to them, that
6 is why they did not come forward.

7 Your Honor, it was the totality of the
8 circumstances that impacted things. That testimony at the
9 end of the day once you remove all the layers and the
10 theatrics from it, is that people came to this court, made
11 representations. They told you everything you needed to
12 hear to approve a sale process right before the holidays
13 and when you approve that sale process, Your Honor, they
14 had said, we're going to clear the debt stack, don't worry
15 about it, we've got to go forward. Then for the first time
16 right before the auction starts they set foot on the
17 premises to take a look around. They're like oh, it was a
18 disarray.

19 And let's make something perfectly clear. My
20 client has not been in possession of that property for some
21 time. It was in the hands of a receiver and then in the
22 hands of the CRO who through the DIP loan was able to
23 address some of the issues and clean it up.

24 Your Honor, testimony like that when there is
25 such incentives that are misaligned with the incentives of

Page

63

1 the estate and its creditors, that testimony cannot be
2 given much probative value. Instead, the Court should, in
3 my opinion, focus on what it focused on at the beginning of
4 the hearing. The Court should focus on the reality that
5 there is a material difference between the listing price
6 and the sale price. The Court should focus on the reality
7 that 90 to 100 days before the auction there was testimony
8 and evidence presented to this court under penalty of
9 perjury as to the value of this home.

10 The Court should focus on the fact that people
11 have a lot of money, but they still have families, they
12 have friends, they have kids and while not everyone
13 celebrates Christmas, that time of the year is typically a
14 slow time for anything to get done. Thus, the testimony
15 that this segment is not impacted by the holiday is
16 nonsensical.

17 And as far as January is concerned, I know we all
18 claim to be, you know, hearing less and less about COVID.
19 That was omicron's heyday. I know because I had to cancel
20 a trip in January because we didn't know if we could come
21 back to the country if we took that trip. And in January
22 the news of COVID was somewhat silenced by news of Russia.
23 In February the news of Russia kept getting more and more
24 and the war on -- potential war in Ukraine. The U.S.
25 issues a warning about an imminent attack on Ukraine. That

Page

64

1 imminent attack unfortunately does take place. And while
2 people thought that perhaps that grass that wasn't mowed at
3 the house would impact the sale price and that the auction
4 should be delayed for, you know, fixing a leak or just
5 cosmetic things like that, people didn't think that
6 starting an auction four days later with market
7 fluctuations and fear of war should be delay ed. That's
8 really the problem.

9 And we go back to the fact that this court
10 received certain evidence and made -- issue its orders and
11 its ruling based on that evidence and the Court should
12 really hold people's feet top the fire. People should not
13 be allowed to come in one day, say one thing and come in
14 shortly thereafter and take a different position. That's
15 why the doctrine of judicial estoppel exists and the facts
16 of this case, the representations made to this court by all
17 the supporters of this sale fall squarely within the
18 elements of judicial estoppel. Some people have talked
19 about what they have to lose here, what they have on the
20 line.

21 My client has a lot on the line. Ten years of
22 his life, almost 40 million dollars of his own money, and a
23 personal guarantee and he doesn't think that this sale
24 should be approved because the sale price is grossly
25 inadequate.

Page

65

1 Your Honor, I don't want to run down the list of
2 arguments and issues that we raised in our objection
3 because I'm sure the Court has reviewed it. And while I
4 don't remember, I think we've beat that dead horse on
5 Friday, but I do want to raise the objection to the buyer's
6 good faith and I want to raise that because you asked Mr.
7 Newman, "When was this addendum signed?" You didn't get an
8 answer to that question. I repeated that question. I
9 didn't get an answer to that question.

10 So when this motion was filed all the way to the
11 time of this hearing, this buyer whenever they signed that
12 addendum, we still don't have an answer to that, had that
13 in his back pocket. If they thought this thing, you know,
14 and they were at the property and I'm sure doing their due
15 diligence, if they thought this wasn't worth buying he had
16 created that out for himself.

17 The record of this case is incomplete. Filing
18 the addendum, the complete asset purchase agreement after
19 the hearing has started doesn't meet the rules. You have
20 to file all of your evidence and everything at the same
21 time.

22 Finally, as to the brokers and the commission, I
23 know they're anxious to get it. We object to the payment
24 to it. And the Court has the authority and the power to
25 revisit the constructure that it has approved before.

1 Section 328 allows for that because the terms and
2 conditions have proven improvident in light of the
3 developments not capable of being anticipated at the time
4 of fixing the terms and conditions of such compensation.
5 I'm not trying to pick on them, but at the end of the day
6 the testimony is questionable and someone should have made
7 that judgment call not to take this property to auction
8 four days after a war broke out. That's the issue. No one
9 wants to accept responsibility for it. And Mr. Golubchik
10 can comment about the lack of evidence regarding that. We
11 don't need a political science professor from Berkeley or
12 Harvard or anywhere to opine on this issue. There's not a
13 single person on this out of the 61 people on the Zoom call
14 who doesn't live in reality, who didn't look at the
15 television set that day and say, oh my gosh, what's going
16 to happen.

17 Your Honor, we do not believe that this sale
18 should be approved. We like Mr. Shinderman's idea of
19 stalking horse and I'm sure Mr. Newman is going to say, you
20 don't approve it, we're out of here, and that's okay. We
21 have a lot on the line and we're willing to take that risk.
22 We believe that a new sale process should be started.
23 However, if the Court is inclined to approve the sale we
24 object to a 363(m) finding. We object to the payment of
25 the brokers' commissions and as far as that -- this issue

Page

67

1 of the refund of the buyer's premium is concerned, that's
2 not an issue for today.

3 And finally, Your Honor, I said this before and,
4 like Mr. Shinderman, I am dismayed that people did not use
5 the weekend to try and bridge the gap to reach a resolution
6 to the issues that are before the Court. And to the extent
7 the Court is inclined, I would request that parties be
8 ordered to mediation to try and resolve the issues because
9 these issues are big issues. There's a lot on the line
10 across the board for everyone and this is not something
11 that, in my opinion, cannot be addressed by people hearing
12 what they should hear. And if the Court is not inclined to
13 do that, it's perfectly fine. We just don't believe that
14 this sale should be approved as is. The sale price is
15 grossly inadequate. Thank you, Your Honor.

16 THE COURT: Thank you.

17 We'll go to Mr. Horoupian, Mr. Morrow, Mr. O'Dea,
18 Ms. Lee DeVoll and I believe it will be back to
19 Mr. Golubchik.

20 Mr. Horoupian.

21 MR. HOROUPIAN: Thank you, Your Honor. Again, I
22 don't want to belabor the points that have been aptly made
23 by those that are objecting, Mr. Rafatjoo on behalf of his
24 client, Mr. Shinderman on behalf of his, then Ms. Andrassy
25 on behalf of hers. The issues are all the same. This

Page

68

1 price is grossly inadequate when you compare it against the
2 evidence. Mr. Golubchik will tell you that the evidence is
3 what was achieved at the auction, but that's not the only
4 evidence in this case. And in fact, there was evidence
5 that was presented to you early on in this case by Mr.
6 Perkins and the debtor where Mr. Perkins opined that the
7 property was worth 325 million dollars as is in nearly
8 complete condition.

9 And Mr. Golubchik may say that, well, that was
10 the and that was for a different purpose, but it wasn't a
11 passing submission of evidence. It was important and it
12 was used by you, Your Honor, in making a finding that the
13 property was worth enough to provide all secured creditors
14 with a 20 percent equity cushion in this case. And now --
15 and I believe it's that evidence that troubled you at the
16 beginning of the hearing on Friday. At least that's what I
17 read from your comments and you should be troubled by it
18 because now you're being asked to approve a sale that is a
19 small fraction of what was represented to you as the value.
20 It's a small fraction of the cost of even developing this
21 property. It doesn't even cover the construction costs.
22 And like Mr. Shinderman said, you heard evidence that this
23 yields a \$1200 or \$1300 per square foot purchase price,
24 which is at least 25 -- at least 15 -- \$1600 less than what
25 the average for this type of home should be. And the

Page

69

1 brokers now will tell you, oh, we don't use price per
2 square foot when we're talking about a property of this
3 caliber. But like Mr. Rafatjoo said, I think you have to
4 look at that evidence right now with a little bit of
5 skepticism because they have an agenda here and that's to
6 have the sale approved so that they can get their
7 commissions paid.

8 Mist -- you may be wondering why Ms. Niami is
9 here objecting to the sale approval. She, like her ex-
10 husband, Mr. Rafatjoo's client, has a personal guarantee of
11 the Hankey debt. And while she may have written off the
12 hope of recouping some of the money that she personally put
13 into this, along with her ex-husband, it was never within
14 her -- the realm of her imagination that she would remain
15 exposed on her personal guarantee because the
16 representations have been made to her and to this court
17 that the sale would cover the capital stack.

18 Representations were made to you or were made to
19 her by Mr. Roffers who told her that the auction would
20 generate 265 to 300 million dollars. That was told to her
21 last year. Now we're being asked to accept and swallow a
22 price that 100 million dollars less. More than a 100
23 million dollars less than that.

24 These aren't rounding errors. They are -- it's
25 an epic failure. We listened to Mr. Roffers and his

Page

70

1 opinion that there should not be a reserve price despite
2 what he represented that he would recommend to Mr.
3 Shinderman's client and to my client and comes in and puts
4 before you a proposal that there should be no reserve price
5 and that we should trust him and that the no reserve price
6 auction would generate the optimum price. That was just
7 wrong. It's proven to be wrong. We are -- we've ended up
8 with a number that's grossly inadequate and we would urge
9 the Court to deny approval.

10 THE COURT: Thank you.

11 Mr. Morrow.

12 MR. MORROW: Thank you, Your Honor. On behalf of
13 Battalion Luxury Group, LLC, as well as Battalion Luxury
14 Design, LLC -- pardon me, Your Honor -- we will refrain
15 from reiterating the arguments that we have made, Your
16 Honor, in our pleadings. Our opposition sets forth very
17 succinctly what our arguments are in relationship to the
18 current motion to approve the sale of this property based
19 on the grossly inadequate amount obtained from that
20 auction.

21 We would submit, Your Honor, that approval of
22 this current motion is tantamount to a *sub rosa* plan of
23 reorganization, the terms and conditions of which have been
24 outlined at this hearing by the proponents of the motion.
25 We would also request that if the Court is so inclined to

Page

71

1 otherwise grant this motion that the Court sets aside the
2 buyer's premium as the non-nominal carveout for the benefit
3 of unsecured creditors, such as my client, and we will rest
4 on that argument, Your Honor.

5 THE COURT: Thank you.

6 MR. MORROW: Thank you.

7 THE COURT: To the objecting mechanics lien
8 holders who've signed stipulations, I would like to just
9 hear any argument you may have given the position that
10 Ms. Andrassy confirmed today regarding potential contesting
11 of the priority of those liens and whether that impacts
12 your position regarding the motion.

13 Ms. Lee DeVall.

14 MS. LEE DEVAL: Yes, Your Honor. Marguerite Lee
15 DeVall on behalf of J&E Texture, Inc. So the stip -- as we
16 noted on Friday, we entered into the stipulation and we
17 included a wet signature copy for the Court's --

18 THE COURT: I saw that. Thank you.

19 MS. LEE DEVAL: You're welcome.

20 And the stipulation is clear that we withdraw
21 opposition if the stipulation were complied with which
22 require our payment out of the proceeds on or before
23 April 30th. We take a slight haircut on portion of secured
24 claim, as well as waiver of attorney's fees. And so I --
25 that is what the stipulation is for.

1 With regard to Ms. Andrassy's comments, you know,
2 there's been a lot oof words thrown around over this
3 hearing and I've sat through all of it, which I would like
4 to note that my client, mechanics lien creditors at best
5 represent a total of one million dollars collectively here.
6 And just to give some figures, that is approximately .3389
7 percent of the total secured debt or in context of the sale
8 price that's 0.275 percent of the sale price.

9 So it's funny that the tiny little mechanics lien
10 creditors who built this property that's being sold to
11 generate the sale proceeds per the Hankey -- for Hankey and
12 Inferno and other creditors are being picked on. Someone
13 mentioned some greed earlier on Friday and I think it's
14 interesting that in equities I do think those were some
15 interesting comments and an interesting position to be
16 taken by a secured creditor who did enter into a
17 subordination agreement with Hankey. And I think
18 California law is pretty clear. No one seems to dispute
19 the fact that construction had already commenced by the
20 time that Hankey recorded its lien and for that reason
21 that's why we have had the concessions on the debtor's side
22 and Hankey's side. And Ms. Andrassy's client, Inferno,
23 agreed to be subordinate to Hankey. And, you know, I cite
24 some case law in the front note of my brief onto this
25 point. I think it's very instructive.

1 Mechanics liens are a constitutional right in
2 California and California courts have a very long history
3 of protecting the claims of mechanics lienholders and
4 they've liberally construed the laws. And I -- you know, I
5 did my research. I didn't find any case specifically -- a
6 published case on point, but I did find an unpublished case
7 and I did cite in my brief, it's *Santa Cruz Lumber v. Bank*
8 *of America*, 160 Cal. App. 3(d), 858 and it dealt with this
9 very situation.

10 And I think it's very important time to note some
11 of the comments made by the court there. There they say
12 other courts have considered the expectations, knowledge
13 and intention of the parties to arrive at an equitable
14 solution that represents the benefits of each of their
15 bargain. And at the end of the day the mechanics lien
16 creditors including my client didn't bargain to be -- to
17 build something and not get paid. We don't bear the risk
18 of lending money at exorbitant interest rates to not be
19 paid. Those were the risks borne by the secured lenders.
20 So for us to be picked on by Inferno is, you know, a little
21 jarring. But ultimately at the end of the day the
22 California court held that when a secured creditor decides
23 to subordinate itself to the construction lender, the
24 mechanics lien takes first priority.

25 So I really don't think Ms. Andrassy's comments

Page

74

1 with regards to Inferno's claims of having superiority -- a
2 priority really have any legal merit. And for that reason
3 I think the stipulation can be approved and the mechanics
4 liens creditors can be paid. And frankly, if they're
5 willing to put their money where their mouth is to take out
6 Hankey on the DIP loan, get rid of the mechanics lien
7 creditors. We're not that much. We just want to get paid
8 for the work that we did and not be carried along for the
9 risk that we did not agree to take upon. And for that
10 reason, you know, we do support in the sense that we've
11 entered into the stipulation and if we get paid, then our
12 objection has been withdrawn, but if we don't get paid we
13 obviously reserve all rights and arguments presented in our
14 opposition.

15 THE COURT: Thank you.

16 Mr. O'Dea.

17 MR. O'DEA: Good afternoon, Your Honor. I echo
18 the comments of Ms. DeVall, but I do want to put at least a
19 finer point on certain issues. Ms. Andrassy raises a
20 general objection to the notion of mechanics liens being
21 paid and it's an argument of priority, but we don't have
22 the factual or legal predicate of her objection.

23 And again, I will refer the Court to doc number
24 192, page 5 at line 14 through page 6, line 8. There it's
25 made clear that California law since 1925 has afforded

Page

75

1 mechanics liens priority. Going forward to 2021, *Miller &*
2 *Starr Real Estate Manual*, the notion is that a mechanics
3 lien priority attaches when work commences and is
4 applicable to all mechanics lienholders, ergo, the work
5 started before Hankey's first priority deed was even
6 recorded. Everyone else down (indiscernible). And I think
7 the underlying rationale for that finding is that what
8 would be sold, what value is conferred but for the efforts
9 of those who build the property and that's where we sit
10 now.

11 And reading between the lines, I don't know it
12 was expressly stated but it sure seems that Hankey's
13 counsel has cheerleaded the notion that at the end of the
14 day the mechanics liens have priority over its own lien.
15 So I don't really know why we are looking down the chain
16 over a dispute that isn't substantiated legally or
17 factually to raise this issue.

18 So with that, unless Your Honor has any
19 questions, I have nothing further.

20 THE COURT: Thank you.

21 Mister -- I realize that I left out Mr. Newman
22 when I said we would circle back to Mr. Golubchik.
23 Mr. Newman, I would like to hear from you and in particular
24 we did have some reference to 363(m). I'd like you to
25 speak to that.

Page

76

1 There have also been some suggestions, commentary
2 about some sort of stalking horse arrangements and if
3 there's any response to that I'd be interested in that as
4 well.

5 MR. NEWMAN: Certainly, Your Honor. So starting
6 with the 363(m) argument I think both the debtor's
7 declaration and our declaration make clear there's no
8 collusion. This is entirely an arm's length transition
9 including my client's participation in the auction. I hope
10 and I think Your Honor's question regarding the conduct of
11 the auction made clear and my testimony made clear that he
12 participated in the auction in good faith and made a bid
13 solely for the purpose of making the bid within the auction
14 rules, all of which I think are -- support the 363(f)
15 finding.

16 And welcome Your Honor's questions. The only
17 discussion I heard in the objector's comment about 363(m)
18 came from Mr. Niami's counsel and it was a question about
19 this addendum. And just so we're clear on what happened so
20 that Your Honor understands the process, we promptly filled
21 out the purchase agreement, signed the purchase agreement
22 and an addendum with some comments to it which were
23 approved over the prior weekend by debtor's counsel and
24 believed we had fully complied and we're sure we fully
25 complied with the requirement. And in fact, my client

Page

77

1 intended and never suggested to the contrary that he was
2 fully bound by a purchase agreement that we understood the
3 debtors to find acceptable.

4 The further the conversation that occurred over
5 the course of the subsequent week had not to do with
6 whether my client was bound to close, which we always
7 believed he was and the debtor has already believed he was,
8 but whether if there was any rent available to my client in
9 the event that the debtors intentionally failed to comply
10 with the bid procedures. That was finally resolved with my
11 client, executed and delivered at the beginning of the
12 hearing an addendum exactly in a form approved by the bid
13 procedures. And again, I don't think there was any
14 suggestion by the debtors or otherwise that my client was
15 not bound through the entire process of the week but simply
16 was seeking to hold the debtors to comply with the bid
17 procedures, which Your Honor had entered and which they had
18 assured my client that they would.

19 So I don't think there's any thing within that
20 factual underpinning that suggests that my client did
21 anything other than participate in good faith and
22 participate in connection with the bid procedures as set
23 out in the court to the best of his ability. And I think
24 the suggestion to the contrary is simply an effort to cast
25 aspersion on the process, which I think has in no way been

1 impacted by anything related to this addendum and that I
2 think the debtors now have lodged a copy of the addendum
3 executed by both parties which is fully compliant with the
4 bid procedures and I don't think there's any suggestion
5 that anything about that issue -- certainly no evidence
6 that anything about that issue ever impacted the sale
7 process or was, frankly, intended to impact the sale
8 process.

9 I don't know if Your Honor has any other
10 questions about that or 363(m). I honestly didn't hear
11 anything else in the argument.

12 THE COURT: I don't have any other questions.

13 MR. NEWMAN: Thank you, Your Honor. So talking
14 about the stalking horse question and I guess what I would
15 say is this. My client's point starting from the hearing
16 we requested in front of Your Honor shortly after -- a week
17 on Friday was, is this sale process going to be respected
18 in the market and is the sale process set out by the
19 Court's order and by the debtor's motion going to be
20 respected in the market. And it clearly was not a pre-
21 shock to try to identify a stalking horse. It was never
22 suggested that that's what my client was being asked to
23 participate in. It was never suggested to any other party
24 to my knowledge that that was what they were asking bidders
25 to participate in.

1 And I think what you were told, Your Honor, by
2 Mr. Roffers at the bid procedures hearing was that what was
3 important was to give parties the impression that the
4 property was going to be sold. That was the purest way to
5 drive value, I believe was the testimony on Friday, and I
6 think that was what these bid procedures were intended to
7 do and I think that is what, in fact, my client believes
8 what he read and understood the bid procedures.

9 And in fact, as I argued a week ago Friday, these
10 bid procedures were particular the point that this auction
11 was the process through which the bidder and buyer was
12 going to be identified. And in fact, the debtors agreed
13 and the auction house represented that the highest bidder
14 at the auction would be the bidder and would be -- I'm
15 sorry, the high bidder would be the buyer presented at the
16 auction and that's, in fact, what occurred. So our concern
17 perhaps is unfounded, but it seems like the debtors have
18 proceeded in good faith.

19 Now, I will note Mr. Perkins probably went above
20 and beyond what my client would have been comfortable with
21 and said that he did continue to interrogate, engage with
22 other potentially interested parties over the past week
23 and, as he said at testimony on Friday whenever he asked
24 for some proof of funds or other certainties that those
25 buyers -- potential buyers were damaged.

1 So what we have here today with respect to the
2 question of whether there was adequate marketing and an
3 appropriately conducted auction process was frankly a lot
4 of argument by lawyers and that's what I'm doing, so I
5 acknowledge it's something we're good at, but not a lot of
6 effort. We've had arguments by lawyers but not what I
7 would refer to as evidence presented by bidders or
8 potential bidders indicating that any of the concerns or
9 questions raised by either the junior secured lenders or
10 Mr. Rafatjoo's client or frankly anyone that there is a
11 bidder. Not one bidder out there in the world who says
12 that any of these items have precluded them from taking the
13 opportunity to present a higher or better offer. And, in
14 fact, as has been discussed in this hearing, the next
15 highest bid that was received at the auction was 100
16 million dollars, 25 million dollars less than my client's
17 bid. And after adding the broker's premium even more less
18 than my client.

19 So I think, Your Honor, there's no evidence in
20 the record guessing that any of the alleged defects or
21 hypothetical concerns that have been expressed by any of
22 the parties actually impacted any bidder's position to
23 present an offer and they've had, you know, more than two
24 weeks since the auction was conducted in order to find one
25 bidder who would be out there.

1 In fact, I'll also add in terms of value, and I
2 understand everyone's frustrated, that people hoped and
3 thought that the price would be higher. In fact,
4 Mr. Roffers testified that this is, in fact, not uncommon
5 with properties listed by this particular builder, that the
6 list price or the initially identified price is often as
7 much as 48 percent less similar to the results here than
8 what is ultimately when the properties ultimately convey.
9 And I think the truth of the matter is there are lots of
10 reasons why a price that might deal with price or an
11 aberrational price or a hoped-for price doesn't
12 materialize. And in this case I think we've articulated
13 many of them, and Mr. Roffers testified headwinds that
14 were known, but the magnitude of which were not known and
15 there's not one piece of evidence that's been adduced by
16 anybody that any of the headwinds or challenges were
17 somehow misapp -- misapprehended or misunderstood and,
18 therefore, there's someone out there in the world who
19 believed that notwithstanding all of these other issues
20 that they are ready, willing and able to anywhere near
21 ready, willing and able to bid more than what my client has
22 bid as of today.

23 I note that the question of the -- what's been
24 referred to as the gross inadequacy of the price was pretty
25 fully discussed I think by the brokers in the testimony on

Page

82

1 Friday. I think Ms. Williams did -- crystalized the issue
2 when she said, you know, although she was competitive and
3 wanted to try to brief the previous record and did
4 everything in her power to do so to get the aspirational
5 purchase price that she supervised a process that was fair
6 and that, you know, when asked whether or not she through
7 that process, the optimum price of the property, she said
8 that despite her hope to do better that she did and
9 similarly Mr. Roffers said that we don't know -- in fact,
10 there has been much made in this hearing by both sides this
11 is a unique one-of-a-kind property.

12 And what Mr. Roffers said rings true. You don't
13 know what properties like this are worth until the market
14 speaks, until bidders appear and actually engage in bidding
15 and there was an active competitive auction in which
16 several parties appeared, made their bids, and that is the
17 surest and best evidence of what the property is worth in
18 its present condition. And its present condition has all
19 kinds of issues, which you've heard and which have been
20 discussed, you know, sort of summed up by the idea of a
21 certificate of occupancy. No one has told anyone, did not
22 receive assurance that this property can be habited and
23 there's no question -- there's no evidence today in front
24 of you as to how much that will be, but obviously the
25 market has spoken. There are very, very sophisticated real

Page

83

1 estate parties right here in Los Angeles with lots of
2 money, who knew every -- all about this property. It's
3 been in the paper every day.

4 So where someone who really knew the real estate
5 market who thought that by putting in a higher bid and
6 putting in additional money and effort in the length of
7 time it would take them to achieve occupancy in this
8 property could do better, you would have heard from them
9 already, Your Honor. Certainly the creditors are
10 incentivized to try to identify those people and provide
11 evidence from them and they have not.

12 I would say your problem here is under any
13 circumstance you could put whatever new procedure in place
14 that the parties want and conduct another process. And
15 there's no guarantee that at the end of that process you
16 won't have the same complaints a higher price is not
17 achieved. And, in fact, you know, I would indicate what
18 Ms. Williams said is the only evidence before Your Honor
19 which is that if this goes back to market in what she
20 referred to as a "failed escrow," you're likely to get less
21 money.

22 And certainly there are many parties here,
23 mechanics lien claimants, unsecured creditors who may
24 benefit from the purchase price carveout, the broker's
25 premium rebate and others, who are not coming before Your

Page

84

1 Honor today to try and undo the sale. They recognize that
2 getting paid now out of cash that's generated now through a
3 sale process that has been conducted fairly without
4 collusion and without any interference by other parties and
5 in accordance with this Court's rule is the best option to
6 get people paid now. Certainly Mr. Hankey, but also other
7 parties owed less money, a million dollars to, you know,
8 what I'd refer to as mom-and-pop creditors who are owed
9 mechanics liens and want to be paid sooner rather than
10 later, as opposed to the two junior creditors who are in a
11 position to try to leverage the process for more money.

12 I would say, Your Honor, that the question about
13 the square footage which Mr. Shinderman raised is addressed
14 I think pretty squarely by Mr. Roffers' comment that you
15 don't know what properties like this are worth until the
16 market speaks. And the thing to remember is every process
17 is different. Every process is the best judgment
18 available. And one thing you haven't heard from any of the
19 objecting parties is any evidence from any competing
20 expert, any other broker or auctioneer or other party that
21 would come forward and say there was something specific in
22 this auction that negatively impacted that. You had a lot
23 of questions and you heard a lot of testimony on Friday
24 that I think answered those questions and you should be
25 giving more weight I believe, Your Honor, to the answers

Page

85

1 being given by witnesses under oath with expertise than the
2 insinuations of the lawyers asking questions that don't
3 have that behind them.

4 For example, the issue for buyers, there's no
5 question that some brokers tried to solicit interest in
6 foreign buyers, but there's also no question that there's
7 no evidence that those buyers are likely to materialize in
8 the event that the failed auction goes back to the market.

9 Certainly it was clear -- now I'm going a little
10 bit, I apologize, out of order, but just taking some notes
11 on comments that were made, question about whether or not
12 this should be subject to court approval. That was
13 certainly understood, but that should not be used, Your
14 Honor, by the creditors now to try to involuntary convert
15 my client into some sort of stalking horse or suggest now
16 that the auction is concluded we know what the market has
17 to be. That, Your Honor, is, in my mind, highly unlikely
18 to incentivize other sophisticated parties who want to
19 participate in this process. Certainly my client would
20 testify that had he known that he was not bidding to be the
21 high bidder but somehow bidding to be a bidder, he would
22 not have submitted the did he submitted, would not be
23 looking at a bid 26 million dollars higher than the next
24 highest bidder.

25 And I think, Your Honor, the counter proposal, if

1 you will, of the junior creditors to submit a DIP proposal
2 kind of demonstrate that, in fact, even they are
3 (indiscernible). They haven't offered additional money to
4 sit behind Mr. Hankey's debt. They've only offered
5 additional money if they get the benefit of priority that
6 those last dollars will come out first. They are not, in
7 fact, with their own money voting for a proposal that would
8 recognize more money than what I had -- what my client has
9 bid, but rather seeking to extend the process.

10 You heard much about the minimum bid. Again,
11 there's no evidence, there's no party providing any expert
12 testimony that such a minimum bid would have changed the
13 result. In fact, it was just the contrary from Mr. Roffers
14 and Ms. Williams that a minimum bid in this case under the
15 fact and particularly a minimum bid that would have been
16 artificially set pay all the secured debt would not have
17 enhanced (phonetic).

18 I'm harking back to a conversation I had with a
19 friend of mine when I was younger, who was trying to sell
20 his house and I asked, "Well, what price do you plan to
21 set?" and he said, "Well, I owe the bank \$100,000. I have
22 a \$10,000 credit card bill and I have \$10,000 left on my
23 student loan, so I'd kind of like to set it at \$140,000."
24 Needless to say, Your Honor, he didn't get the \$140,000 and
25 the market was the surest way to determine what he was

Page

87

1 going to get for that house, not what he owed the various
2 parties.

3 I'll note one of the things on the profit.
4 There's been much made right now about how there should
5 have been an extension. Someone should have said there
6 should have been an extension. I'll note no motion was
7 brought, Your Honor. No emergency motion. We certainly
8 know how to bring an emergency motion. None of the
9 creditors complaining here today filed papers, asked Your
10 Honor to reconsider her earlier order.

11 And, in fact, Your Honor, one could say in
12 looking at the matter with a jaundiced eye that perhaps
13 they were interested to see how the auction turned out so
14 that they could involuntarily convert the winner of that
15 auction into a stalking horse, as opposed to the winning
16 bidder. I think had these concerns cause as much concern
17 as -- then as they appear to now would have been prudent
18 for the market, for the marketing process, for the
19 infallibility of judicial process in this Court's order to
20 have raised that issue before parties, including my client,
21 spent three days participating in an ongoing auction. And
22 frankly, although -- and Your Honor recognized that these
23 issues were raised with respect to minimum bid at the time,
24 the evidence was heard and decision was made and the market
25 relied on it and people participated. And if we change the

1 rules only after we're disappointed in the results it's
2 hard for parties, my client and others, to have any
3 confidence that they are not going to waste their time by
4 participating in a judicial sale, such as this one.

5 Your Honor, I would like to cover just a couple
6 of things and, again, not to reiterate what's been said by
7 the parties and not to reiterate what we said in our papers
8 on the 363(f) issue, but I would like to make a couple of
9 notes on this conversation. I think the mechanics lien
10 claimants as indicated have consented. And in addition, to
11 the extent they are not being paid ahead of Mr. Hankey as
12 there's been some suggestion they may not, their rights
13 fall also under then the 363(f)(5) and (f)(1) analysis that
14 if they're junior to Mr. Hankey's lien, then they are
15 subject to being sold free of either through a foreclosure
16 action or a receivership action.

17 THE COURT: Are you referring now to the DIP
18 lien, the receivership certificate or the first priority --
19 the prepetition loan or all of them?

20 MR. NEWMAN: Well, as Mister -- all -- I would
21 say not all them, right. As Mr. Golubchik indicated, there
22 is a -- the 363(f) test is in the injunctive. So if
23 there's any basis upon which to sell free and clear, that
24 should be sufficient for Your Honor to order free and
25 clear. There's no contention, I don't believe, that the

Page

89

1 mechanics lien claimants are senior to the DIP loan. So
2 were the DIP loan foreclosed, it would be possible under
3 applicable non-bankruptcy law to compel a monetary
4 satisfaction (indiscernible) or under 363(f)(1) to sell
5 free and clear of their interests in a judicial
6 foreclosure.

7 And I guess I would note -- this is the thing
8 that occurred to me as I heard the discussion, which is
9 Your Honor can rightly be concerned about *Clear Channel* and
10 what it means and is it precedential given the fact that
11 it's a BAP decision, therefore not binding on this court.
12 And certainly harkening back to my comments on Friday that
13 maybe it's just wrong. Certainly all other circuits have
14 taken the view that it's just wrong.

15 But even without looking at that broader
16 question, all Your Honor is really being asked to determine
17 is whether in this case as applied it -- 363(f) provides
18 justification for selling free and clear. And I think,
19 Your Honor, as you heard from Mr. Golubchik and I'll just
20 reiterate, under 363(f)(2) there are disputes about the --
21 I'm sorry, there's a consent of certain parties and we've
22 gone through the list.

23 Again, I believe just reading Mister -- the Yogi
24 and Inferno papers they've impliedly or expressly consented
25 to sell free and clear because they didn't argue 363(f) in

Page

90

1 their written papers and any arguments not made in the
2 written papers are waived.

3 But regardless of whether that's the issue, I
4 think 363(f)(1) as applied would permit under the
5 receivership order in this case to sell free and clear of
6 any of these interests. 363(f)(5) in the foreclosure of
7 the DIP lien, which is senior to all of these interests,
8 would permit under applicable non-bankruptcy law. The
9 loans -- the liens to be sold free of or converted to
10 monetary judgment and I think Your Honor raised the
11 question, what about the fact that we know or we think in
12 this case that the amount is zero and I think the answer to
13 that question is two-fold.

14 One, is it doesn't say in 363(f)(5) that it has
15 to receive a monetary judgment. It's just whether the
16 presentation, in this case being junior to a senior
17 perfected lien that's entitled to foreclose, would allow
18 those liens to receive the monetary judgment or be sold
19 free and clear of under 363(f)(1). Again, the receivership
20 order in this case would allow that to occur and I think
21 that applies in equal force to all of the liens in the debt
22 stack since there is in this case a senior DIP loan that by
23 judicial order is senior to all the other liens.

24 I'll just note briefly I think that Your Honor
25 should in closing kind of remember that there is benefit to

1 many parties in this transaction as there are in most
2 bankruptcy sales and that the reason that 363(f) gives so
3 many alternatives to sell free and clear of junior liens
4 and other liens in interests is that what bankruptcy does
5 is it converts interest to dollars. It doesn't try to
6 maintain a cloud on title of property with the asset of the
7 debtor and allows the debtor to transact those assets,
8 gather the most money and distribute it *pro rata* to parties
9 based on their respective interests. And that respects the
10 interest of the mechanics lien claimants in this instance
11 and respect the interests of creditors who will have the
12 opportunity to assert interest in the broker's premium and,
13 in this case, allow parties to let the property become
14 disentangled from this whole process and move on for its
15 best use. And I think the key issue really I hope Your
16 Honor focuses on is that this auction was conducted by
17 people with expertise. They were fully cognizant of many
18 issues that have been asserted today and they did their
19 best to try to achieve in actual value. My client relied
20 on their efforts, participated in good faith in the auction
21 and is now offering what we believe to be a fair price in
22 light of all the circumstances and the highest price
23 available in the market.

24 And we hope Your Honor approves the sale free and
25 clear of all the liens in interest and find my client to be

Page

92

1 a good faith purchaser within the meaning of 363(f).

2 Unless Your Honor has any questions that was all I wanted
3 to cover.

4 THE COURT: Would you support waiver of the 14-
5 day stay that would otherwise be applicable under Federal
6 Rules of Bankruptcy Procedure?

7 MR. NEWMAN: We would, Your Honor. We would like
8 the stay to be waived and we'd like to be able to proceed
9 as rapidly as possible upon entry of an acceptable order by
10 the Court.

11 THE COURT: Thank you.

12 Mr. Golubchik, I want to --

13 MR. NEWMAN: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Mr. Golubchik, I want to turn to respond to
16 anything you think would be necessary. I think that the
17 framework you gave in your introductory comments today
18 focusing first on 363(b) and then on (f) is probably the
19 structure that makes the most sense here again.

20 MR. GOLUBCHIK: That's fine, Your Honor. And I
21 will address some of the commentary. Let's start with
22 Mr. Shinderman's commentary as to the credibility of
23 Ms. Williams.

24 Well, it'd be great, Mr. Shinderman, if you have
25 a copy of the transcript, you were referring to the

Page

93

1 testimony, if we could put it on screen share to discuss
2 her testimony.

3 (No response.)

4 Silence. Okay. So --

5 MR. SHINDERMAN: Excuse me. No, I don't have a
6 copy, but I took copious notes, Mr. Golubchik.

7 MR. GOLUBCHIK: Okay.

8 MR. SHINDERMAN: And she said we didn't look at
9 foreign buyers, but clearly other people did.

10 MR. GOLUBCHIK: Okay. Let's proceed.

11 Your Honor, Mr. Shinderman referred to
12 Ms. Williams' testimony as not being credible for numerous
13 reasons. One is he said she testified that the price of a
14 house in that area is \$2500 a square foot and here \$1200 a
15 square foot. And if you consider the C of O issue, that's
16 impossible. She actually stated that a completed house
17 with a C of O based on comparables is in the range of 2500
18 and to help Mr. Shinderman's position I think she said 2500
19 to 3500 per square foot based on comparables. This house
20 has no comparables. People that are in real estate are
21 aware that generally when you have a per square foot price
22 the larger something is the lower the per square foot
23 price, but that's not even the issue.

24 The issue is, does anybody, including
25 Mr. Shinderman, know what needs to go into to obtain a

Page

94

1 certificate of occupancy and I'll tell you no. There are a
2 lot of unresolved issues. And it's not simply a
3 certificate of occupancy. My father is a contractor. He'd
4 buy houses, fixer uppers, fix them up and sell. Like you
5 could move into this house. With this house it is a fixer.
6 There's things need to be done, but you can't even move
7 into the house. And there's no indication of when you'd be
8 able to move into the house. The broker opined as to the
9 value based on the broker's expertise. And to say that the
10 number is substantially lower so it's not credible and I
11 think such a statement is not credible.

12 Mr. Shinderman said that Ms. Williams' testimony
13 that ten million dollars was spent on marketing is not
14 credible because even at 200 million dollars, they wouldn't
15 make enough money to cover that. Well, Ms. Williams didn't
16 say it would cost ten million dollars. She said the
17 marketing efforts were so vast and so thorough that had
18 there been a value it would have cost had they had to pay a
19 third party. It would cost ten million dollars.

20 We all know. We have declarations attached to
21 the motion and that goes to Mr. Rafatjoo's comments about
22 insufficient evidence of marketing of everywhere there was
23 publication all of the efforts done, Ms. Williams testified
24 that his store -- and the recent history, the majority of
25 high-priced sales in around Beverly Hills, Bel Aire, were

Page

95

1 American individuals. I think we know from the news the
2 crypto current where all this has been responsible for
3 making a lot of wealthy individuals.

4 But she is not the one broker. That is exactly
5 why we have a team. Aaron Kirman testified he went to
6 Europe. He met with four people. Not as Mr. Rafatjoo
7 stated that he only talked to four overseas individuals.
8 This is meetings. People talk by phone, by email, you
9 know, Signal, WhatsApp, but he went over there.

10 The point is the goal here was to have a team.
11 We had the Williams doing what they do best around here.
12 Aaron Kirman traveled and we had Concierge with their
13 online expertise. So to say based on this she's not
14 credible, that doesn't even make sense.

15 There's a discussion by Mr. Shinderman that
16 Mr. Roffers finally admitted that there was a minimum price
17 on a related property nearby and I think a few people at
18 this hearing are also involved in the bankruptcy case. I
19 think he has claimed why he didn't answer directly and the
20 reason is there's no employment order. There are no terms.
21 I think the suggestion is to have a 50 million-dollar
22 reserve, but until there's an order there's nothing set.

23 But this point is, again, has been -- and that's
24 Ms. Williams. When you can compare properties and you have
25 similar comps it's easier to formulate the strategy. Here

Page

96

1 that was not a case. Here you have a very unusual property
2 and the message for Mr. Roffers was that we all need to
3 know the property will be sold at the end of the auction.
4 No lookee-loos sitting around.

5 Now, Mr. Shinderman properly said that as a
6 result there was as 50 million-dollar offer which sat
7 there for two -- or he might have said two-and-a-half days.
8 Absolutely accurate. Mr. Roffers explained and
9 Ms. Williams yesterday said because she doesn't have
10 experience with the online auction she learned that the
11 first -- until the very end it's going to be dead. There's
12 going to be a low number and at the end that's when action
13 is going to happen consistent with what Mr. Roffers told
14 us. Everything happened exactly. The only difference is
15 the numbers did not go up.

16 Again, there's no evidence, there's no testimony
17 that there was any issue with the marketing. Mr. Rafatjoo
18 made a great presentation about the war except he dresses
19 really well, but I don't know how much insight he has into
20 the ultra-rich and what their plans are, whether holiday or
21 ready to bid.

22 Had we had evidence or maybe even one of the
23 people that was interested to provided some testimony, we
24 have nothing to balance the testimony of the debtor's side
25 to say that something is different.

1 There -- a lot has been said of Mr. Roffers'
2 discussion with Ms. Niami earlier about 265 million-dollar
3 sale price, but it seems the parties are ignoring his
4 testimony that he didn't appreciate the scope of the C of O
5 issue that happened and how much work may need to be done.
6 At the time brokers need -- of course, brokers want --
7 everyone wants to get employment. He learned afterwards,
8 but remember, it wasn't Ms. Niami that employed him. It
9 was Mr. Perkins on behalf of the debtor employed him and he
10 employed not because someone says, I'm going to sell
11 something for a certain price. But Concierge has a
12 reputation, came across after interviews as a top online
13 auction house, that deal saying international real estate.
14 Same thing with the Williams and Mr. Kirman.

15 I couldn't follow Mr. Rafatjoo saying that they
16 didn't come to the property until the very end. They've
17 been to the property many times. I've seen them at the
18 property several times, so I have no idea where there was
19 testimony that they were not on the property until just
20 before the auction. They've been to the property many
21 times. They're well aware of the property.

22 Then we have Yogi and Inferno. I'm going to talk
23 about (f) issues later. But initially Ms. Andrassy said,
24 "Your Honor, Yogi and Inferno are willing to put their
25 money where their mouth is. We're willing to step into

Page

98

1 Hankey issues and have a first super priority lien." There
2 are several problems with that. One is we need Hankey to
3 consent to be paid out. Another problem is adequate
4 protection because now this auction seems to have an
5 indication of the value of the property. Don't know if we
6 can provide adequate protection to get a new loan in first
7 position.

8 And then what happens if there is no sale later
9 on? When does Yogi and Inferno then get to foreclose on
10 the property? They are not putting their money where their
11 mouth is. If I can have a piece of it, I would love to be
12 in first position of that property and take a return, as
13 I'm sure many other people, but this is not a risk. It's a
14 sure thing loan.

15 If they really want to put their money where
16 their mouth is, they can guarantee to the estate 141
17 million dollars and if the property doesn't sell in a month
18 or two months, they buy it for that price. That's putting
19 your money where your mouth is. And we know that the buyer
20 doesn't want to stick around. I have no idea whether
21 they'll change their mind, but right now the buyer is not
22 going to sit and be a stalking horse bidder.

23 It appears instead that Yogi and Inferno, as
24 often happens, basically trying to rail on Hankey as the
25 first lienholder. Yogi and Inferno have personal

Page

99

1 relationships with Mr. Niami. They're buddies. They've
2 invested in lots of properties. That's why their liens
3 refer to numerous properties, had numerous deals.
4 Unfortunately based on their current circumstances this was
5 not a good deal for them.

6 Now, while Mr. Geher is properly sitting quite,
7 our view, as we express in our motion, is Hankey's 106
8 million-dollar principal loan, 23 or 23 and a half of that
9 is likely in fourth position.

10 So while Yogi asserts approximately 20 million,
11 Hankey asserts approximately 20 million -- I'm sorry, Yogi
12 and Inferno each approximately 20 million, Hankey is 23
13 million based on the waterfall Hankey additional money is
14 going to be out of the money.

15 So it seems over here, though, rather than
16 suggesting a reasonable solution, they're not doing
17 anything other than trying to get a beneficial return by
18 stepping in Hankey's shoes, which doesn't resolve anything.
19 Now, this weekend I was hoping would be used to work
20 something out and really it's the buyer and presumably Yogi
21 and Inferno. That hasn't happened, but we have no choice.
22 We have to deal with this situation that we're facing.

23 We have Hankey who provided initial loan didn't
24 provide any representations or warranties, didn't do --
25 provide a valuation. Their loan is split up, 82 and a

Page

100

1 half, 23 and a half. Yogi has a disputed claim. Now, when
2 there's a discussion when Mr. Shinderman stated that we
3 didn't assert an objection, I'm looking at our motion and
4 the chart on page 14 to 15, which discusses that the loan
5 also went to certain other properties including Hillcrest,
6 Londonberry, Bellagio, Carcason (phonetic), Stone Ridge
7 properties. This is something to be investigated later,
8 but this is some -- and plus, there's a profit
9 participation. Not a regular lender/borrower relationship.

10 Then we have Inferno. Inferno says they're only
11 objecting based on that Exhibit 6, the subordination and
12 nothing else. I looked at the same chart on page 12 and
13 there's discussion of two other properties, Mapleton and
14 Hillcrest, for which loans were made at various times. We
15 have asserted objections -- not objections, but assertions
16 of *bona fide* dispute. And importantly, while they argue it
17 on Friday and today, their pleadings did not assert any
18 responses to either one.

19 THE COURT: Would you turn to a couple of things?

20 MR. GOLUBCHIK: Sure.

21 THE COURT: First, the proposed payments to be
22 made at closing. Where is the debtor in that? I just want
23 to -- I want to make sure I have that clear because we've
24 had a lot of discussions of who gets paid first and when.
25 So what is -- and even in the motion -- or actually in the

Page

101

1 reply I guess the debtor had two scenarios.

2 MR. GOLUBCHIK: I can tell you that a standing
3 desk does not have much room to work on.

4 MR. SHINDERMAN: Your Honor, while Mr. Golubchik
5 looks for that I just have to quote from their pleading
6 that says the debtor believes that there "may be basis to
7 object." That's on page 44. Mr. Golubchik also knows we
8 give him information. Fortunately, we requested more
9 follow-up. The proffered participation doesn't appear in
10 any of our documents, so may one day object is not a
11 dispute. Anyway, thank you, Your Honor.

12 THE COURT: Okay. Thank you.

13 MR. GOLUBCHIK: Page 3 of the reply.

14 THE COURT: Okay. So let's walk through the
15 proposed payments then. What would you ask the Court to
16 approve?

17 MR. GOLUBCHIK: All right. Let's go in order.
18 We would ask the Court -- the brokers did their job, Your
19 Honor. The deal was -- if the property is marketed, the
20 brokers -- and there's actually a provision, less than 175
21 million they get one percent. But this specific
22 possibility is provided for in the broker employment
23 agreement, so they're entitled to the money, so they
24 should -- there should be the commission.

25 THE COURT: Okay.

1 MR. GOLUBCHIK: Buyer's broker did his or her job
2 and the seller's. So we would like to be able to pay out
3 the two mechanic liens objections because we've looked at
4 them. If the court says no, then they'll be -- the liens
5 will attach to the proceeds with the same extent and
6 priority and we'll have to deal with it.

7 We would like next to pay the Hankey DIP loan.
8 We would like to pay -- let's skip over the 82.5 Hankey for
9 now if we're on the same chart. We'd like to pay the
10 receiver certificate loan which was ordered in the
11 receivership estate as priority. We'd like to pay the
12 property taxes and closing costs.

13 THE COURT: Okay.

14 MR. GOLUBCHIK: We would like to pay the
15 principal amount of the Hankey 82.5 so interest doesn't
16 accrue because interest on such a large amount is a lot --
17 larger amount.

18 THE COURT: Now, this is probably a question for
19 Mr. Geher because on Friday Mr. Geher did say a couple of
20 times, "We don't need to be paid our 82.5." I wanted to
21 hear the position there.

22 MR. GEHER: Your Honor, if payment of the 82.5 is
23 the sole reason you would say, I can't approve the sale, we
24 don't need to be paid the 82.5. That is our position. We
25 don't -- so we're fine not being paid 82.5 because I don't

Page

103

1 want Mr. Shinderman and Ms. Andrassy something untoward is
2 happening. Nothing untoward is happening. We'll take it
3 later because we know we're going to get it based on the
4 facts, not people's speculations.

5 So we have no problem leaving 82.5 million
6 dollars in the pot, as I said on Friday, so that everyone,
7 certain creditors can still fantasize about whens and ifs
8 and when reality hits, reality hits and what -- and the
9 money goes where it's supposed to go. So we are -- we are
10 satisfied. I know the debtor wants to pay us because of
11 the interest accrual issue and I understand, appreciate and
12 respect that.

13 But because Hankey's position is this sale should
14 be approved, I'm not here to throw a hurdle or a roadblock
15 to having what we believe is this sale being approved
16 because it's the best we're going to get and getting true
17 value for the property.

18 MR. GOLUBCHIK: Your Honor, there is a twist
19 here, which I think is important. If the Court is inclined
20 to approve and we're talking about distribution, I have a
21 feeling that Yogi and Inferno may agree that the 82.5
22 should be paid. I think the interest rate right now is 16
23 percent per annum. That is a very nice return and I don't
24 want to pay that return to Mr. Geher's client. I would
25 rather pay the money out, so that's the question to you.

Page

104

1 MR. GEHER: Sixteen is the default rate of
2 interest, Your Honor, which I believe originally 11 as a
3 result of the defaults where, like every other normal
4 commercial loan had a default interest rate.

5 THE COURT: I believe you've indicated on Friday,
6 Mr. Geher, that that works out to about \$46,000 a day?

7 MR. GEHER: It was -- that number of -- I'm
8 looking because I've -- yes, 46,845. That interest amount,
9 Your Honor, is on the entirety of our whole principal
10 amount --

11 THE COURT: Okay.

12 MR. GEHER: -- which is over 100 million dollars.

13 THE COURT: Okay.

14 MR. GEHER: So it -- the interest on the 82 is
15 obviously a large chunk of the 46 but not the entirety of
16 the 46.

17 THE COURT: Okay. Thank you.

18 MR. GOLUBCHIK: Sixteen percent is \$13,200,000
19 per year, 1.1 per month, 36,666 per day.

20 MR. SHINDERMAN: Your Honor, if you are going to
21 put on the motion I think Mr. Golubchik is right that
22 Yogi -- and Ms. Andrassy could speak for Inferno -- we'd
23 have it paid without prejudice to disgorgement claw-back,
24 et cetera. It's not prejudiced. It's not final, but we'd
25 like to save the default interest as well.

1 THE COURT: Okay. Thank you. I just want to
2 make sure I have all my opening questions covered here as
3 we get to the end of all of your presentations and I know
4 you've all spent a long time on seeing the last couple of
5 days.

6 The one thing, Mr. Golubchik, that you and I
7 talked about coming back to was also 363(f)(5) in
8 particular and, you know, we've heard from a lot of people
9 on (f)(5) and I wanted to give you an opportunity to
10 address whatever you'd like to address there.

11 MR. GOLUBCHIK: Sure, Your Honor. That's -- I'd
12 like to comment about other people. While Mr. Geher is
13 very animated in his presentations, he's also very astute
14 when it brought up I skipped over (f)(1), which provides
15 that applicable non-bankruptcy law permits sale of such
16 property free and clear of such interest without reference
17 to a money judgment.

18 We have the receivership proceeding which
19 specifically provides for a sale. So even if you were to
20 ignore the consents, which we don't think you should, *bona*
21 *fide* dispute money judgment about (5) on your (f)(1) based
22 on the proceeding before the receivership court, a sale
23 free and clear is appropriate and we attach a copy of the
24 order to the reply which clearly states that the property
25 can be sold free and clear of liens and everything attaches

Page

106

1 to the sale proceeds.

2 And again, we've proposed several different
3 options disjunctive. Only one needs to apply for this to
4 work and we think it does.

5 The main thing, Your Honor, the other thing -- I
6 wanted to say two things -- one is the discussion from
7 Mr. Shinderman and Mr. Horoupian and Ms. Andrassy
8 discussing the war and things should have happened, we
9 should have delayed it. They're all competent attorneys.
10 They could have filed something with the Court. Mr. Newman
11 wasn't happy with us not agreeing to his provision for
12 reservation of rights and he files something. Any of them
13 could have done something, but they did not.

14 The issue is -- and if you recall at our -- on
15 Friday during questioning of both Mr. Roffers and
16 Ms. Williams, Mr. Newman and I focused on the term "optimal
17 value" for the sale of the price -- of the property. The
18 reason is as stated in our brief reference to the *Lahijani*
19 case, 325 B.R. 282 (9th Cir. BAP, 2005), which was cited by
20 *Golden Empires*, a Ninth Circuit from 2007 where the court
21 stated:

22 "A sale that is well advertised and subject to
23 overbids is usually the preferred method to achieve
24 the best possible price. However, the guiding
25 principal is that the court obligations, Section

1 363(b) sales, is to assure that optimal value is
2 realized by the estate under the circumstances. Based
3 on the current circumstances we have testimony from
4 the brokers and the auctioneer that optimal value was
5 realized."

6 It's that circumstances may not be great
7 circumstances, but for 363(b) we have to operate within the
8 circumstances we've given. None of the objecting creditors
9 filed any motion with the Court or any request to do
10 anything different than what we did.

11 And then the final thing I wanted, Your Honor,
12 just so the record is clear, we have that individual and
13 Mr. Smith specially appearing discussing an offer for 500
14 million. Just so the record is clear, I have not seen that
15 offer, but to the extent there's any reference to the
16 offer, we'd ask the Court not to accept it. And if the
17 Court is going to proceed with the sale, proceed with Mr.
18 Newman's client.

19 THE COURT: Thank you.

20 I want to thank everyone for their really
21 excellent work and exceptional patience. It is 2:24. I
22 have told you that there is going to be a ruling today. I
23 need a 15-minute break. I guess everyone could use a 15-
24 minute break and then we'll resume for a ruling. We're
25 going to stop recording. I'd encourage you to mute your

Page

108

1 own line and stop your video if you're on. We will resume
2 just about at 2:40, okay?

3 ATTORNEYS: Thank you, Your Honor.

4 (Off the record at 2:25 p.m. Back on the record
5 at 3:01 p.m.)

6 THE CLERK: Please come to order. This court is
7 again in session.

8 THE COURT: Thank you very much. And thank you,
9 everyone, for all of your patience. Oh, give me one moment
10 here. Let me mute everyone's lines so we don't have any
11 feedback. Okay. Thank you for waiting. I apologize that
12 my 15-minute estimate was a bit off.

13 So it occurred to me on Friday that that date was
14 the 12-year anniversary of the day that I was sworn in as a
15 bankruptcy judge. And I first thought, well, what better
16 way to celebrate and to have a really fascinating hearing
17 with excellent lawyering all around on a really interesting
18 case.

19 And as I've been thinking about this motion I was
20 brought back to a question that I was asked in my Ninth
21 Circuit interview by Judge William Fletcher, a wonderful
22 judge, who asked me what did I think was a successful
23 bankruptcy case. You know, that is -- that's a loaded
24 question and I remember at the time answering that I
25 thought that a successful case in the context of Chapter

1 11, which is what I practiced as an attorney, you know,
2 early in my practice it was, you know, a confirmation of a
3 plan of reorganization. That's what most people think of
4 when they go into Chapter 11 practice, but that over the
5 years I had seen that a lot of successful cases end up in
6 sales of properties and even though, you know, maybe that's
7 not what you typically think of as a reorganization that
8 could be viewed as a successful case.

9 And then in the consumer context you think of,
10 well, what's a successful Chapter 13 case. Well, I guess
11 it's a case where a plan is completed or someone
12 accomplishes the goals of the plan, but it's not
13 necessarily the case where all creditors get paid or where
14 in Chapter 13 where any creditors get paid. And I think
15 that what is so difficult about a case like this one is
16 that this proposed sale doesn't feel like a success to
17 anyone. Well, maybe to the proposed buyer, but other than
18 that, I don't think it feels like a success to anyone.

19 But that's not the legal standard under Section
20 363 and I think that under Section 363 the case law and the
21 statute have to approve this sale. So I'm going to walk
22 through the law and how I think it applies to the facts
23 here, but, you know, under 363(2)(b) the Court can
24 authorize a sale of property of the estate if it finds that
25 there's a valid business purpose. There's no dispute

Page

110

1 there. There's a fair and reasonable price. We'll get
2 back to that in a minute. There's been adequate marketing
3 and notice. I think here the record demonstrates that
4 there was adequate marketing and notice. I think there was
5 some issue of dispute as to the marketing, but I don't
6 think that looking at the totality of the record that there
7 is really any question that there is some population of
8 eligible buyers that was not reached.

9 Some of the cases require a finding of good
10 faith. Others do not. I think that in this case that the
11 seller has demonstrated that it was proceeding in good
12 faith, which is the 363(b) standard. We'll get to buyer
13 good faith later, but I think the real concern here was
14 whether this was a fair and reasonable price. And when I
15 said that this doesn't feel successful it's because this
16 price seems very low.

17 And under the case law it is the debtor's burden
18 to establish that there is a fair and reasonable price
19 under the circumstances. And the cases are also clear
20 that, you know, an auction that is conducted pursuant to
21 court approved procedures generally presume to be a process
22 that will lead to a fair and reasonable price.

23 Now, the *Lahijani* case directs the Court to
24 remember that it has an independent duty to look at the
25 provisions of the sale particularly when it appears that

Page

111

1 bidding has been somehow constrained. And there was some
2 evidence that was submitted as the objecting parties argued
3 that this was not a fair and reasonable price and perhaps
4 bidding was constrained. And at this point I'm going to
5 note for the record that I'm going to overrule all of the
6 evidentiary objections that were raised by the debtor and
7 I'm going to -- I will consider as admissible all of the
8 evidence submitted in opposition to the sale.

9 And when I do that, there is some -- nothing in
10 the record to suggest me -- to me that competition was
11 constrained, that there are any irregularities in the
12 procedures. And this concept of a grossly inadequate sales
13 price is important because it comes from the case law. And
14 even when I look at the case law and even if I accept --
15 well, I can accept a number of prices to compare to the
16 proposed sale price when I consider whether the dollars are
17 grossly inadequate. A 125 million dollars is within the
18 range of what other courts have accepted as a fair and
19 reasonable price. It would not be grossly inadequate and
20 cases come down on one side or the other. Those that do
21 make findings of grossly inadequate, those cases typically
22 involve other irregularities in the procedures. A lot of
23 them involve a topping bid, as we say, from another party
24 where the question for the Court is, does the Court reopen
25 an auction because other bids have come in or another bid

Page

112

1 has come in or a bid came in late and wasn't accepted.

2 That is not the case here. There are no other
3 bids that have come in. And let me clearly state for the
4 record the sale that I am approving today is the sale
5 pursuant to the auction. The Court is not in possession of
6 other funds from any proposed buyers. The debtor has made
7 it clear that the debtor is not holding funds from other
8 buyers and that there have been no other qualified bids by
9 the auction procedures.

10 So there have been no other activities outside of
11 the auction that was conducted to suggest to me that there
12 were any irregularities or any other activity that would
13 suggest that this auction was flawed.

14 Now, I actually think that the testimony of the
15 proposed buyer, Mr. Saghian, made it very clear that if
16 anything this auction ended up leading to a high bid that
17 was actually higher than what would have been yielded. For
18 example, if the auction had closed at the actual time that
19 the additional eight-minute gap led to an extra six million
20 dollars where the top bidder outbid himself, that his
21 conversations with representatives of the auction house
22 again didn't chill bidding, didn't depress the price, but
23 rather led to an enhanced price.

24 Now, we talked a lot about the issue of Ukraine
25 and global circumstances and what happened in the world and

Page

113

1 how that impacted or didn't impact the market. And I think
2 that there are credible arguments made on both sides that,
3 you know, the situation could have led to fewer bids.
4 There have been credible arguments that perhaps markets
5 could have adjusted and that things would be different now,
6 but there are also arguments to suggest that things could
7 be worse now.

8 There also have been a lot of arguments made
9 about the lack of a minimum bid here in the auction and
10 whether that was the best idea or not the best idea. But
11 these arguments about global circumstances, whether there
12 should have been a reserve or not all end up essentially
13 being arguments that would ask me to substitute my judgment
14 for that of the debtor in possession and that's not what
15 the case law requires me to do.

16 The case law requires me to look at the totality
17 of the circumstances and look to whether as the *Lahijani*
18 court states, an optimal value was achieved under all of
19 these circumstances. And I think here while again it
20 doesn't feel like a good result, I think it is a justified
21 result under the case law interpreting Section 363(b).
22 This was an auction conducted pursuant to the procedures
23 that the court approved. Could different procedures have
24 led to a different result? I -- nobody knows the answer to
25 that, but that's not the inquiry that the Court has to

Page

114

1 make. The Court has to look to the circumstances, how the
2 auction was conducted in connection with the order, was
3 this property marketed, was there an opportunity to bid,

4 If a price is found to be grossly inadequate
5 under the majority of the case law there are other factors
6 involved in how the auction was conducted and whether there
7 are other bids out there. And the record is clear that
8 there hasn't been a bid. And, in fact, after this sale
9 with the emergency motion that was brought by the proposed
10 buyer, it was very clear that additional bids were being
11 sought out and they just didn't come in. So the
12 requirements of 363(b) I think are satisfied here.

13 363(f), which goes to the approval of a sale free
14 and clear of liens, 363(f) offers five alternatives to sell
15 free and clear there in the disjunctive, which means only
16 one needs to be satisfied. 363(f)(1) really wasn't argued.
17 It was a half a sentence in the motion. We've had some
18 commentary on it today in particular, but I don't think
19 that the argument was developed adequately really for the
20 court really to make a finding on that today.

21 363(f)(2) I think is satisfied only as to the
22 consenting mechanics lien creditors. That is the two that
23 have entered into stipulations with the debtor. I do not
24 believe, as the debtor has argued, that silence equals
25 consent. I don't think that the *ACCEL Concrete* case is as

1 helpful as the debtor thinks that it is. It seems to me
2 that the reasoning in *Roberts*, which is cited by the BAP --
3 the Ninth Circuit BAP in *East Airport Development* made
4 clear that some affirmative consent is required to
5 constitute consent under 363(f)(2). So I don't think that
6 his subsection applies other than again as to the
7 specifically consenting mechanics lien creditors and as Mr.
8 Geher noted Hankey as a creditor, but as to any other
9 creditors that doesn't apply. Obviously 363(f)(3) is not
10 applicable here.

11 363(f)(4) *bona fide* disputes, I don't think that
12 this is applicable either. The language of the statute is
13 clear that the *bona fide* dispute has to be as to the
14 existence of the interests, not as to its amount or
15 priority here. So 363(f)(4) is not appropriate.

16 So that leaves us with 363(f)(5). Let me make
17 sure that I am clear in quoting the exact language.

18 "Such entity could be compelled in a legal or
19 equitable proceeding to accept a money satisfaction of
20 such interest."

21 So what is the legal or equitable proceeding that
22 would apply here and under this record the legal or
23 equitable proceeding would be a foreclosure on the DIP
24 loan. There is a Bankruptcy Court order that says that the
25 priority of that lien is senior to all other liens. So a

Page

116

1 foreclosure proceeding as to that loan would be sufficient
2 to extinguish all other interests. That satisfies *Clear*
3 *Channel*. That satisfies *Clear Channel* and beats the
4 analysis that was raised in other cases, including *Hassan*
5 *Imports* (phonetic) and that is how I make the finding under
6 363(f)(5) that the sale would be free and clear of all
7 liens.

8 363(n), this is the protection provided by the
9 statute after a finding of good faith on the part of the
10 buyer. We've had some commentary with respect to the
11 addendum and the timing of the file -- filing of the
12 addendum and the signature on the addendum. That document
13 has been signed. It has been filed. There is a signed
14 contract by the parties. The evidence demonstrates to me
15 quite clearly that this is a buyer who has proceeded in
16 good faith. There is no evidence of any collusion. There
17 is no evidence to suggest that this is anything other than
18 an arm's length transaction between the seller and the
19 buyer and the buyer is entitled to a finding of good faith
20 here.

21 I do want to make it clear, though, that any
22 order approving the sale is not to include the language
23 that it seems like a million years ago that Mr. Golubchik
24 and I discussed at the very beginning of this hearing that
25 the order would not be subject to any stay pending appeal

Page

117

1 because I do not think that that language is appropriate
2 for anything that this Court would have authority to put
3 into an order because it would effectively make it
4 unreviewable.

5 The proposed distribution of proceeds. So what
6 this order is going to authorize from the proceeds, the
7 sale price of 126 million dollars, what has been referred
8 to as the premium rebate of \$11,970,000 issues regarding
9 that rebate and how it is used, what interests it might be
10 subject to, that is all to be decided another day.

11 So what will be paid is the broker's commission.
12 While I think that there were again compelling arguments
13 about how low the sale price is, I don't think that any of
14 those arguments suggest that the professionals did not do
15 their jobs and that a result was achieved that was in
16 accordance with their requirements of the Bankruptcy Code.
17 They are entitled to be paid. That amount is \$2,520,000,
18 the amount owed on the DIP loan.

19 And here I actually have a question if counsel
20 for the debtor is available. Mr. Golubchik, my question to
21 you is whether there is still cash on hand for the debtor
22 from the DIP loan proceeds and whether that cash is going
23 to go toward repayment of the DIP loan or whether all of it
24 comes from proceeds of the sale.

25 MR. GOLUBCHIK: Your Honor, first of all, I just

Page

118

1 wanted to let you know, I have to pick up a child, so I
2 switched to mobile. That's why I --

3 THE COURT: Not a problem.

4 MR. GOLUBCHIK: -- am not on video, but --

5 THE COURT: I can hear you just fine.

6 MR. GOLUBCHIK: The intent -- I believe that
7 there are still funds in the estate and I don't know if
8 Mr. Perkins is on the line with us to the extent the Court
9 wants to know how much. I think it's around two million
10 dollars. With that anticipation is because the estate is
11 still going to have expenses whether those that have
12 accrued or not that the sale proceeds at this time will be
13 used to pay the DIP loan.

14 THE COURT: Okay. So the amount -- and you may
15 not have the papers in front of you.

16 MR. GOLUBCHIK: I think it's \$12,059,000
17 approximately.

18 THE COURT: Okay. Okay. All right. So the
19 order will authorize payment of that. the order will
20 authorize payment of the receivership loan, which I'm
21 showing you --

22 MR. GEHER: Excuse me, Your Honor.

23 THE COURT: Yes. Mr. Geher.

24 MR. GEHER: I'm sorry to interrupt. So on the
25 receiver loan -- excuse me, the DIP loan, yes, I believe

Page

119

1 the number of \$12,059,500 was as of March 21 because that
2 was the then closing date. It has -- it will accrue a
3 little extra interest. I don't know if the Court is
4 cutting it off at the 82 -- at the 12,059,000 or it's just
5 allowing Mr. Golubchik to pay it off in full. It's just a
6 matter --

7 THE COURT: That could be --

8 MR. GEHER: I'm sorry?

9 THE COURT: That can be updated if there's been a
10 little -- I understand that the number might be slightly
11 different.

12 MR. GEHER: Thank you, Your Honor.

13 THE COURT: The receivership certificate I'm
14 showing as \$879,380.70. Property taxes -- and again --

15 MR. GEHER: Again, Your Honor, that --

16 THE COURT: Yeah.

17 MR. GEHER: I'm sorry. That number is slightly
18 off. I think Mr. Golubchik was off by a few thousand, but
19 not material in terms of 100 million dollars. Talking just
20 a few thousand.

21 THE COURT: Okay. And I think this is going to
22 be the same for the next couple items as well. Property
23 taxes which on the debtor's chart is listed as \$2,488,815.
24 Again, that's, you know, an estimate. Other closing costs
25 again estimated at \$630,000.

Page

120

1 All mechanics lien claims and the principal as to
2 the Hankey loan will be held and not distributed subject to
3 further agreement among those parties asserting interests
4 in the proceeds. I wish that that were not the case,
5 particularly with respect to the mechanics liens and
6 Ms. Lee DeVoll I think aptly pointed out. These are not
7 large claims, but given that there is a dispute as to
8 priority and given the very large amount of interest on the
9 prepetition loan, again I think it's in the parties'
10 interest to try to resolve this, but for purposes of the
11 order those amounts will not be distributed from sales
12 proceeds. They will be subject to further agreement among
13 the parties and the Court's available for proposing a
14 stipulation if you need a hearing or anything like that.
15 The Court will be available for that.

16 MR. GOLUBCHIK: Your Honor, so --

17 THE COURT: Yeah, go ahead, Mr. Golubchik.

18 MR. GOLUBCHIK: I assume that's the case. Just
19 want to make sure what we put in the order.

20 THE COURT: Okay. Thank you. I think that given
21 these distributions it is clear that this is not a *sub rosa*
22 plan to the extent that there were any objections to the
23 proposed sale of the *sub rosa* plan they are overruled.
24 There has been a request to waive the 14-day stay under
25 Rule 6004 and given the maturity date of the DIP loan I

Page

121

1 think that there is a basis to waive the 14-day stays.

2 Now, to the extent that there is relief that
3 anyone is going to seek from this order, the Court is
4 available if any relief needs to be sought on shortened
5 time. I don't intend to make it difficult for anyone to
6 seek whatever relief they think might be appropriate.

7 So Mr. Golubchik, I will look for an order from
8 you. It's getting late in the day. I wouldn't expect to
9 have that entered today. I don't even know if it would be
10 lodged today but I certainly will review and enter it as
11 quickly as possible.

12 MR. SHINDERMAN: Your Honor, may I be heard --

13 MR. GOLUBCHIK: I understand.

14 MR. SHINDERMAN: -- real quickly, Your Honor?
15 This is Mr. Shinderman.

16 THE COURT: Oh, do you have a question?

17 MR. SHINDERMAN: I don't understand there to be a
18 dispute as to the 82 million -- excuse me. So again, I'd
19 like to save interest for the estate.

20 THE COURT: I understand.

21 MR. SHINDERMAN: So is it possible? Again, I'm
22 not aware of anyone not wanting to pay the 82.5.

23 THE COURT: Well, I thought that -- I think
24 Ms. Andrassy might disagree since my understanding was that
25 as to Inferno there was a dispute as to not only the

Page

122

1 priority of the Hankey lien, but also mechanics liens,
2 which is why they --

3 MR. GOLUBCHIK: Well, Your Honor --

4 THE COURT: -- need to be held.

5 MR. GOLUBCHIK: Your Honor, Inferno only asserted
6 that objection as to the mechanics lien. Ms. Andrassy can
7 speak for herself but I don't think there's any dispute
8 that they subordinated too any.

9 THE COURT: Okay. Ms. Andrassy.

10 MS. ANDRASSY: Yeah, I raised the issue. Your
11 Honor is correct. I raised issues with respect to both the
12 mechanics lien holders and with respect to Hankey Capital,
13 although I did suggest that there was a number that my
14 client would consent to and I propose that the Court might
15 set a continued hearing on that issue about what amount the
16 parties could agree to pay Hankey to cut off the interest
17 accumulation, but I'm not sure how Your Honor wants to
18 proceed with that.

19 THE COURT: Well, again, I think it's got to just
20 be subject to some agreement among the parties. If you
21 need to have a hearing, you know, I think that there are
22 broader issues which might require a briefing which might
23 not be expedited. I don't know, but I'm going to have to
24 leave it to the parties to, you know, I would hope to
25 attempt to resolve something as, you know, expeditiously as

Page

123

1 possible.

2 MR. GEHER: Your Honor, just as a question --

3 THE COURT: Yes, Mr. Geher.

4 MR. GEHER: -- and I'm not going to ask about the
5 82.5, but based on the Court's rulings do Mr. Shinderman
6 and Ms. Andrassy reconsider their position as to the
7 mechanics lienholders? I'd like to see these people get
8 paid who worked on the property, but I'm not carving it out
9 of me. If they all agree to be paid, we will agree to
10 subordinate it. So I would just see if we could remove an
11 issue to get hard working people paid.

12 THE COURT: Understood. I don't know if they're
13 in a position to agree or not today. Ms. Andrassy?

14 MS. ANDRASSY: I am not, Your Honor. I'd have to
15 talk to my client about that.

16 THE COURT: Okay. Thank you.

17 MR. SHINDERMAN: We do not object.

18 THE COURT: You would not object, but I think it
19 would require both the objecting secured creditors.

20 All right. Well, again, I do want to thank
21 everyone for their hard work. I wish that this was a
22 little bit different, but I think that the legal standard
23 has been satisfied here, so I'm going to enter the order
24 when it is lodged. Thank you so much, everyone.

25 ATTORNEYS: Thank you, Your Honor.

Page

124

1 (At 3:29 p.m.)

2 * * * * *

3 I certify that the foregoing is a correct
4 transcript from the electronic sound recording of the
5 proceedings in the above-entitled matter.

6
7 *Ruth Ann Hager*

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9 _____ Date: 3/27/2022

10 RUTH ANN HAGER, C.E.T.**D-641

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